National Energy Board

Reasons for Decision

CanStates Gas Marketing

Chevron Canada Resources Limited

Renaissance Energy Ltd.

Western Gas Marketing Limited

GH-3-94

November 1994

Gas Exports

ERRATA

NATIONAL ENERGY BOARD

Reasons for Decision
in the matter of applications from

CanStates Gas Marketing

Chevron Canada Resources Limited,
on behalf of Chevron Canada Resources

Renaissance Energy Ltd.

Western Gas Marketing Limited

GH-3-94

The following corrections are made to the GH-3-94 Reasons for Decision:

1. On pages (v) and 1, the definition of the abbreviation for Chevron should read "Chevron Canada Resources Limited on behalf of Chevron Canada Resources".

2. On page 52, paragraph six, "1 November 1994" should read "1 November 1993".

3. On page 72, the heading should read "Terms and Conditions of the Licence to be issued to Chevron Canada Resources Limited on behalf of Chevron Canada Resources".

Moreover, the gas export application made by Chevron Canada Resources Limited was made on behalf of Chevron Canada Resources and any reference to Chevron Canada Resources Limited in the Reasons for Decision should be understood as such.

National Energy Board

Reasons for Decision

In the Matter of

CanStates Gas Marketing

Chevron Canada Resources Limited

Renaissance Energy Ltd.

Western Gas Marketing Limited

Applications Pursuant to Part VI of the *National Energy Board Act* for Licences to Export Natural Gas

GH-3-94

November 1994

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Abbreviations

Act	*National Energy Board Act*
Altana	Altana Exploration Company
AmGas	AmGas Inc.
Anderson	Anderson Exploration Limited
ANG	Alberta Natural Gas Company
ANR	ANR Pipeline Company
APMC	Alberta Petroleum Marketing Commission
Applicants	CanStates, Chevron, Renaissance and Western Gas collectively
A&S	Alberta and Southern Gas Company
Atcor	Atcor Ltd.
AWA	Alberta Wilderness Association
Bay State	Bay State Gas Company
Bcf	billion cubic feet
Board	National Energy Board
CanStates	CanStates Gas Marketing
Cascade	Cascade Natural Gas Corporation
Chevron	Chevron Canada Resources Limited
CNGS	Chevron Natural Gas Services Inc.
CUSA	Chevron U.S.A. Inc.
DCQ	Daily Contract Quantity
Dekalb	Dekalb Energy Canada Limited
DOE/FE	(United States of America) Department of Energy, Office of Fossil Energy
Dorset	Dorset Exploration Limited

EARP Guidelines Order	*Environmental Assessment and Review Process Guidelines Order*
EIA	Export Impact Assessment
Elan	Elan Energy Inc.
ERCB	(Alberta) Energy Resources Conservation Board
FEARO	Federal Environmental Assessment Review Office
FERC	(United States of America) Federal Energy Regulatory Commission
Foothills	Foothills Pipe Lines Ltd.
FS	firm service
GAIA	Green Alternatives Institute of Alberta
GHR-1-87	*Review of Natural Gas Surplus Determination Procedures*
GH-5-93 Review	NEB Review of its decision in GH-5-93
GIC	Gas Inventory Charge
GJ	gigajoule(s)
GLGT	Great Lakes Gas Transmission Company
GRC	Gas Reservation Charge
Hermiston	Hermiston Generating Company, L.P.
Home	Home Oil Company Limited
Home Licence	the second licence applied for by CanStates
LDC	local distribution company
MAV	Minimum Annual Volume
MBP	Market-Based Procedure
MDQ	Maximum Daily Quantity
MGU	Michigan Gas Utilities

Midwest Resources	Midwest Resources Inc.
MMcf	million cubic feet
MW	megawatt (1000 kilowatts)
National Fuel	National Fuel Gas Supply Corporation
NCAC	Northwest Conservation Act Coalition
NEB	National Energy Board
NGMA	Natural Gas Market Assessment
Northern Border	Northern Border Pipeline Co.
Northern Lights	Northern Lights Society
Northern Utilities	Northern Utilities, Inc.
NOVA	NOVA Corporation of Alberta
NuGas	NuGas Limited
PGT	Pacific Gas Transmission Company
Phillips	Phillips Petroleum Canada Limited
Pool Licence	the first licence applied for by CanStates
Regulations	NEB *Part VI Regulations*
Renaissance	Renaissance Energy Ltd.
Renaissance U.S.	Renaissance Energy (U.S.) Inc.
Rife	Rife Resources Limited
RMEC	Rocky Mountain Ecosystem Coalition, M. Sawyer, B.C. Energy Coalition, Diamond Hitch Outfitters and Old Sarcee Uterus Clan collectively
Schedule A Producers	Anderson, Atcor, Dekalb, Dorset and Elan collectively
Schedule B Producers	Altana, Dorset, NuGas, Phillips, Rife and Tarragon collectively

Tarragon	Tarragon Oil & Gas Ltd.
Tcf	trillion cubic feet
TEMCO	Transco Energy Marketing Company
Tennessee	Tennessee Gas Pipeline Co.
TransCanada	TransCanada PipeLines Limited
Trends and Issues	NEB report titled *Canadian Energy Supply and Demand 1993-2010 - Trends and Issues*
Viking	Viking Gas Transmission Company
WCSB	Western Canada Sedimentary Basin
Western Gas	Western Gas Marketing Limited

Recital and Appearances

IN THE MATTER OF the *National Energy Board Act* and the regulations made thereunder;

AND IN THE MATTER OF applications under Part VI of the *National Energy Board Act* for new licences to export natural gas by CanStates Gas Marketing, Chevron Canada Resources Limited, Renaissance Energy Ltd. and Western Gas Marketing Limited;

AND IN THE MATTER OF Hearing Order GH-3-94, as amended;

HEARD at Calgary, Alberta on 12 to16, 19 to 23, 26 to 30 September and 3 to 6 October 1994.

Before:

K.W. Vollman	Presiding Member
A. Côté-Verhaaf	Member
R.L. Andrew, Q.C.	Member

APPEARANCES:

S. Carscallen D.C. Edie	CanStates Gas Marketing
K.F. Miller K.S. Archibald	Chevron Canada Resources Limited
D.G. Davies	Renaissance Energy Ltd.
M.J. Samuel	Western Gas Marketing Limited
R.W. Graw	Alberta Natural Gas Company Ltd.
M. Oldershaw	Alberta Greens
E. Wolf	Alberta Ratepayers Association; BC Alberta Wilderness Association; Atlin Naturalists Society; Native Canadian Petroleum Association; Donna McPhee
V. Pharis	Alberta Wilderness Association
M. Sawyer	Rocky Mountain Ecosystem Coalition; B.C. Energy Coalition; Diamond Hitch Outfitters; Old Sarcee Uterus Clan; and on his own behalf

N. Norcross	Canada Greens/Rocky Mountain Region Association
P. Fournier	Canadian Association of Petroleum Producers
J. Paschen	Canadians for Responsible Northern Development
A. Munz	Green Alternatives Institute of Alberta
K. Jardine	Greenpeace Canada/Climate Change Campaign
S. Harrison S. Baldwin	Northern Light Society
J. DiPeso	Northwest Conservation Act Coalition
B. Horejsi	Speak Up For Wildlife Foundation
S. Sethi	Amoco Canada Petroleum Company Ltd.
R.B. Brander	Centra Gas Ontario Inc.
D. Rowbotham	Enserch Development Corporation
J. Lutes	Foothills Pipe Lines Ltd.
L.E. Smith	Hermiston Generating Company, L.P.
I. MacLean	Home Oil Company Limited
J. St. Louis	Pan-Alberta Gas Ltd.
M.A.K. Muir	ProGas Limited
P. French	Westcoast Gas Services Inc.
P. Abramowicz	On his own behalf
S.J. Baldwin	On his own behalf
N. Conrad	Rocky Mountain Ecosystem Coalition
P. McCunn-Miller	Alberta Department of Energy
I.V. Gendron J.B. Hanebury	Board Counsel

Chapter 1

Part VI - Gas Export Licence Applications

1.1 The Applications

During the GH-3-94 proceeding, the National Energy Board ("the Board or NEB") examined five applications for seven gas export licences from the following parties:

1. CanStates Gas Marketing ("CanStates");

2. Chevron Canada Resources Limited ("Chevron");

3. Renaissance Energy Ltd. ("Renaissance"); and

4. Western Gas Marketing Limited ("Western Gas").

Table 1-1 provides a summary of each export licence application.

On 9 May 1994 the Board issued Hearing Order GH-3-94 which set down and established procedures for hearing the five gas export applications. Following the issuance of Order GH-3-94, the Board received a number of requests to adjourn the hearing pending the completion of the review of its decisions in Hearing GH-5-93 ("GH-5-93 Review"). The basis for the requests to adjourn concerned the uncertainty about the scope of the Board's obligations under the *Environmental Assessment Review Process Guidelines Order* (the "EARP Guidelines Order") and the *National Energy Board Act* (the "Act") to undertake an assessment of the environmental effects and directly-related social effects of gas export licence applications. On 6 June 1994 the Board granted the adjournment pending the decision in the GH-5-93 Review.

On 30 June 1994 the Board released its Reasons for Decision with respect to the GH-5-93 Review; and on 11 July 1994, the Board issued Amending Order AO-1-GH-3-94 which announced that the Board would be proceeding with the hearing, and set out the dates for various steps in the hearing process.

Table 1-1
Summary of Applied-for Licences
GH-3-94

Application	Buyer (Type of market)	Term	Export Point	Maximum Quantities Applied For: Daily 10^3m^3 (MMcf)	Annual 10^6m^3 (Bcf)	Term 10^6m^3 (Bcf)
1. CanStates (Pool licence)	Hermiston (cogen. plant)	15 years following first deliveries	Kingsgate, B.C.	841.5 (29.7)	307.1 (10.8)	4606. (162.6
CanStates (Home Licence)	Hermiston (cogen. plant)	15 years following first deliveries	Kingsgate, B.C.	420.7 (14.9)	153.5 (5.4)	2303. (81.3
2. Chevron	Hermiston (cogen. plant)	15 years following first deliveries	Kingsgate, B.C.	585.8 (20.7)	214.4 (7.6)	3210 (113.
3. Renaissance	AmGas (system supply)	First deliveries to 31 Oct. 2003	Monchy, Saskatchewan	140.0 (4.9)	51.1 (1.8)	511. (18.(
4. Renaissance	Bay State (system supply)	1 Nov. 1995 to 31 Oct. 2005	Niagara Falls, Ontario	180.0 (6.4)	66.0 (2.3)	660 (23.
	Northern Util. (system supply)	1 Nov. 1995 to 31 Oct. 2005	Niagara Falls, Ontario	28.0 (1.0)	10.1 (0.4)	10 (3.(
5. Western Gas	MGU (system supply)	First deliveries to 31 Oct. 2003	Emerson, Manitoba	205.0 (7.2)	75.0 (2.7)	75 (26

Chapter 2

Motions and Rulings

2.1 Introduction

A large number of motions were made before the Board during the course of the GH-3-94 proceeding. Some of the motions had important implications for the hearing as they dealt either with jurisdictional or major procedural issues. Although the Board ruled on these matters during the course of the hearing, the disposition of the motions is repeated in this chapter to assist the reader in better understanding the issues which required the Board's consideration during the course of hearing these applications.

2.2 Motions for Adjournment

Prior to hearing any evidence on the merits of the applications, the Board heard argument on two motions for adjournment. The Board denied the motions. The Board's ruling was as follows:

> The Board has before it two motions to adjourn the GH-3-94 Proceedings. One put forward by Canada Greens and the other by Rocky Mountain Ecosystem Coalition.
>
> Without repeating all of the arguments here, we will summarize the thrust of the motions by saying that the grounds for the adjournments were essentially that the GH-3-94 Applicants have not responded fully to questions put to them by the Intervenors and that the Board has acted outside of its jurisdiction in a number of ways. For example, by failing to require Applicants to submit all of the items listed in the Part VI Regulations; by failing to exercise its discretion in a proper manner by applying a broad policy to dispense with the requirements for filing those items instead of reviewing the situation on a case-by-case basis; and, by replacing the duly enacted Regulations with a broad policy and draft Regulations.
>
> It was also argued that the failure of the Board to require Applicants to file all of the information required pursuant to the Part VI Regulations results in an incomplete tabling of all of the material and information requisite to the Applications to export natural gas.
>
> Again, we have not endeavoured to repeat all of the grounds for the motion. Neither will we reproduce all of the arguments heard against the motion. The Board has listened carefully to what everyone has had to say.
>
> In reaching this ruling, we have taken into account all of the views of those speaking in support for the motion for adjournment. We note that the Board has already ruled with respect to the issue of referring the applications for an environmental assessment by a Review Panel and there is no need to repeat that ruling here.

The granting of an adjournment is discretionary and, in the Board's view, the arguments raised in support of the motions for adjournment have not persuaded the Board that an adjournment should be granted.

The issues raised by those who spoke in favour of the motion are matters that are best dealt with during the course of the hearing, including final argument, after all of the evidence has been entered.

For example, if parties feel that information is missing or incomplete, they will have opportunities during the course of the hearing to request that information if it is relevant and required.

If at the end of the evidentiary portion of the hearing parties are still of the view that all of the relevant and required information has not been placed before the Board, they will have the opportunity to make that point during final argument.

Also, for example, if parties wish to argue that the Board exceeded its jurisdiction or failed to exercise its jurisdiction, they will have the opportunity to do so during final argument.

The parties should not understand this ruling to mean that the Board has ruled against the substance of their arguments. We have not done so. However, the Board is ruling that the arguments, in substance, do not amount to sufficient grounds to adjourn these proceedings.

The motions for adjournment are denied.

2.3 Apprehension of Bias

An issue was raised with respect to an apprehension of bias on the part of the Board. Mr. Wolf, on behalf of the parties he represented, commenced his motion on the second day of the hearing, however, he asked to stand down to finalize his preparation. Later, Mr. Wolf presented evidence and indicated that his matter was really an argument with respect to the merits of the proceeding as opposed to a preliminary motion.

Also on the second day of the hearing, Mr. Sawyer, on behalf of the parties he represented, spoke on the issue of apprehension of bias. He characterized his representations as "... not a motion, it's another preliminary matter." He requested an undertaking that the case not be discussed with the Chairman of the Board. Mr. Sawyer stated that his concern arose from a letter written by the Chairman which, in his view, indicated set views on certain energy matters. Mr. Sawyer was provided with the following undertaking:

> Mr. Sawyer, perhaps to get to the point, that is an easy undertaking to give. The Board operates on the principle that those that hear the case decide. And it's totally inappropriate for any Member of this Panel to discuss the case with any other Board Member, including the Chairman. That simply does not happen.

Ms. Pharis, on behalf of Alberta Wilderness Association, also raised the issue of an apprehension of bias. She requested that the panel of Board members hearing the application be replaced or, in the alternative, that the Board rescind its decision made in the GH-5-93 Review. She argued that the current Board members had participated in that decision and had therefore demonstrated a bias towards condoning development at the expense of environmental concerns. The Board's ruling denying the motion was as follows:

> Ms. Pharis, we understand your concern about the GH-5-93 Decision, but your concern about that Decision is now being pursued in another court, in the Federal Court of Appeal. I think that is the proper place to resolve your concern and we are not prepared to stop this proceeding or change the Panel. We will wait for the outcome of that decision.

2.4 Introduction of Board Staff

Dr. Horejsi, representing Speak Up For Wildlife Foundation, requested that staff of the Board in the hearing room identify themselves and describe their backgrounds. He desired to know the level of knowledge that would be available to assist the Board members in their deliberations. The Board's ruling was as follows:

> A motion was also made to obtain the names and credentials of Board Staff in the room today.
>
> When taking a decision, the Board has available to it the expertise of its staff. The staff attending a hearing can change on a daily basis. Their credentials are not and will not be made available to parties.
>
> The Board would draw to Intervenors' attention the fact that there is information available on Board Staff and their organization in the Board's library. We invite Intervenors to review this information, if they wish.
>
> We have asked the Chief Librarian to ensure that these documents are readily available.

2.5 Evidence Submitted on a "Without Prejudice" Basis

CanStates prefaced its replies to intervenor information requests with the following words:

> In CanStates' Responses (filed July 20, 1994) to the Board's Environment Screening Information Request (as set forth in Appendix V to the Hearing Order) it has been identified that there is no necessary connection or proximity between the possible granting of the applied for export licences and the construction or development of any particular upstream facilities or any other upstream activities. There is therefore no necessity for any further environmental review with respect to upstream activities. Consequently, many of the Information Requests directed by this Intervenor are not relevant to these proceedings. Nevertheless, CanStates has responded thereto for the sake only of expediting these proceedings and in order to assist the Board in

> determining the relevance and admissibility of the questions that have been asked. These responses are provided by CanStates without prejudice to its right to object to the admissibility in evidence of such irrelevant material in this proceeding and without prejudice to CanStates' right to argue in the alternative, that if for any reason such material is admitted in evidence herein, the material ought to be given little or no weight by the Board. CanStates hereby expressly objects to the admission of such evidence in these proceedings.
>
> Wherever a response below is preceded by the word "CAUTION", the foregoing objection to the question is to be deemed to have been made by CanStates.

Canada Greens objected to certain portions of the "caution" and requested that the Board strike the objectionable words. The Board ruled that this was not necessary:

> Turning now to Canada Greens' motion regarding CanStates' reply to Intervenor Information Requests, the Board makes the following ruling: Mr. Carscallen has agreed that CanStates' answers are part of the record and are evidence in these proceedings. As such, they are the proper subject of cross-examination.
>
> The Board will, however, entertain in the usual manner objections to questions posed during cross-examination and will rule on each objection at the time that it is made.
>
> Canada Greens has specifically asked the Board to order the removal of the words "relating to the weight to be given to the evidence". It is not necessary for the Board to make such a ruling. Those cautionary words have no effect.
>
> Parties are always free to make submissions on the weight to be given to evidence. However, the proper time for those submissions is during the final argument.

2.6 Late Intervenor

Donna McPhee requested late intervention status at the outset of the hearing. There were no objections to her request. The Board granted her the standing and added her name to the list of parties.

2.7 Board's Jurisdiction - Environmental Effects on Global Commons

On the third day of the hearing, the Board called for parties to argue on the issue of whether the Board had jurisdiction to consider the environmental effects on the global commons of the end use in the United States of the gas to be exported. The issue arose during Mr. Sawyer's cross-examination of the CanStates witnesses when he requested the production of a certain document. The Board's ruling is reproduced below.

A motion was made by Mr. Sawyer on behalf of Rocky Mountain Ecosystem Coalition and other Intervenors to compel CanStates Gas Marketing to produce the Bonneville Power Authority Environmental Impact Statement. At issue were the carbon dioxide emissions that would result from the operation of the plant and their impact on Canada.

The Board considered the motion and decided, in light of the nature of the cross-examination that was occurring, a fundamental jurisdictional question needed to be answered before the Board could deal with the question of whether the aforementioned document should be produced.

The Board is of the view that the issue that must first be dealt with is whether the Board has jurisdiction to consider the environmental effects on the global commons of the end-use in the United States of the gas to be exported. The Board stated this jurisdictional issue and asked parties to present argument on it.

Extensive argument was presented by the parties. The Board will not review all of the arguments made, but has considered them carefully in coming to its decision on this question. Rocky Mountain Ecosystem Coalition, which I will refer to as "RMEC", limited its argument to the narrower issue of the Board's jurisdiction to consider the environmental effects within Canadian borders of the end-use of the gas in the United States.

RMEC is of the view that the Board has jurisdiction to consider these environmental effects within Canada under paragraphs 4(1)(a) and (b) of the Environmental Assessment Review Process Guidelines Order, which I will refer to as the EARP Guidelines Order. These paragraphs state:

"4.(1) An initiating department shall include in its consideration of a proposal pursuant to section 3
(a) the potential environmental effects of the proposal and the social effects directly related to those environmental effects, including any effects that are external to Canadian territory; and
(b) the concerns of the public regarding the proposal and its potential environmental effects."

RMEC stated that it was not seeking to change the Board's ruling on paragraph 4(1)(a) of the EARP Guidelines Order as set out in the GH-5-93 Review. RMEC is presently seeking leave to appeal that discussion to the Federal Court of Appeal.

In its Decision in the GH-5-93 Review, the Board found that it did not have jurisdiction to consider the environmental effects of the end-use of the gas to be exported. It interpreted paragraph 4(1)(a) of the EARP Guidelines Order as requiring an assessment of the transboundary effects of upstream facilities located in Canada.

RMEC took the position that the Board's decision in the GH-5-93 Review was related to an assessment of environmental effects within the United States. In this case, it argued, it was asking the Board to consider environmental effects within Canada, and

therefore this situation differed from that considered in the GH-5-93 Review. The potential environmental effects of the proposal that RMEC seeks to have assessed are effects located within Canadian borders that result from activities or undertakings outside Canada's borders. RMEC relied on section 3 of the EARP Guidelines Order. It requires an initiating department to "ensure that the environmental implications of all proposals for which it is the decision-making authority are fully considered". As a result, in RMEC's view, this section, in conjunction with the paragraph 4(1)(a), gives the Board jurisdiction to consider the environmental effects in Canada of the end-use of the gas in the United States.

RMEC further relied upon paragraph 4 (1)(b) of the EARP Guidelines Order which provides that an initiating department shall include in its consideration of a proposal "the concerns of the public regarding the proposal and its potential environmental effects". As we understand his argument, Mr. Sawyer took the view that the Board was under an obligation to take into account the concerns of the public about the effects on Canada of the downstream use of the gas proposed to be exported.

Greenpeace narrowed the jurisdictional argument by further by [sic] stating that it was only seeking to establish the jurisdiction of the Board to consider the environmental effects on federal areas of jurisdiction of the end-use of the gas in the United States.

Other parties were of the view that any evidence relating to carbon dioxide emissions occurring in the United States failed to be material or, alternatively, relevant.

Some parties took the position that a consideration of the environmental effects of the end-use of the gas was outside the scope of the Board's jurisdiction.

A licence to export gas, it was argued, is a piece of paper and has no environmental effects. The only matters related to an export which could have environmental effects are activities or facilities. The Board, it was argued, cannot consider the environmental effects arising from facilities or activities in the United States. As a Canadian regulator, it can only assert jurisdiction over facilities in Canada. Furthermore, to the extent that the Americans have to rely on Canadian regulators to guard against the transboundary environmental impacts of Canadian facilities, Canadians have to rely on the U.S. regulators to guard against the transboundary environmental impacts of the U.S. facilities.

A number of parties noted the concern and interest of the federal government in the question of carbon dioxide emissions and their effects on climate change. The Board is aware that this issue is a matter of interest to Parliament and the Legislatures and there are ongoing efforts at the international, national, and provincial levels to deal with this issue. The Board, though, is an appointed, not an elected, body. The Board is a creature of statute. It has no inherent jurisdiction and its powers are contained within the statute.

To decide if the Board has the jurisdiction to consider the environmental effects on areas of federal jurisdiction of the end-use of the gas in the United States, the narrowest question posed by some Intervenors, the language of the EARP Guidelines Order must be examined.

The EARP Guidelines Order establishes the environmental review process for the Board and for many other federal departments and agencies. A review of the EARP Guidelines Order indicates that there is no express language whatsoever allowing an initiating department, of which this Board is one, to examine undertakings or activities outside Canadian borders and assess their environmental effects within Canadian borders.

The definition of "proposal" in Section 2 of the EARP Guidelines Order does not include any reference to matters external to Canadian territory. In fact, the only reference to matters outside Canada is found in paragraph 4(1)(a) which, as the Board noted in the GH-5-93 Review, permits an initiating department to consider environmental effects that move transboundary from Canada to the territory of another nation. There is no similar explicit direction requiring initiating departments to consider the environmental effects that move transboundary into Canada from activities or undertakings subject to the jurisdiction of another nation. Further, the fact that the EARP Guidelines Order expressly provides for an assessment of only transboundary effects that migrate from Canada, indicates to this Board that there can be no implicit authority for the Board to assess transboundary environmental effects that migrate into Canada. Had Parliament intended initiating departments such as this Board to look at environmental matters outside Canadian borders, it would have given that explicit direction. Similarly, an initiating department has no authority to consider public concern about these activities and undertakings outside Canada. Until an initiating department is given the jurisdiction to consider the environmental effects that occur outside Canada and move into Canada, the Board must respect the abilities of United States regulators to guard against the transboundary environmental effects that result from activities and undertakings inside that country's borders.

Some parties argued that the necessary jurisdiction could be found in the National Energy Board Act and the Part VI Regulations. The Board notes that neither the legislation nor the regulations establish any explicit jurisdiction to look at environmental effects originating outside Canada. As a result, the same conclusion must be reached as was reached upon examination of the EARP Guidelines Order.

Mr. Horejsi, on behalf of RMEC, urged this Board to "open the doors" to an assessment of these environmental effects. The Board does not have at [sic] mandate to "open the doors". That mandate is given in a democratic society to Parliament. To have those doors opened there are avenues available to the intervenors. As was noted by counsel for Chevron, there are both public participation and political processes in place to effect legislative change. Those are the processes that are available to the parties to this hearing who wish to have the Board consider how the end-use of the gas in the United States affects the Canadian environment.

We have considered this motion on the narrowest jurisdictional basis possible, as was presented to us by some of the intervenors. It follows therefore that the larger question, the question of the jurisdiction of the Board to consider the environmental effects on the global commons of the end-use of the gas in the United States, must be answered in the negative. The motion therefore is dismissed and the Board will not require CanStates to produce the Bonneville Power Authority Environmental Impact Statement.

2.8 Motion to Strike a Panel of Board Staff

A motion was brought for the Board to strike a panel of witnesses composed of Board staff to be questioned on the assumptions and methodology used in compiling the Board's technical reports. The Board denied the request, ruling as follows:

> Mr. Sawyer, on behalf of Rocky Mountain Ecosystem Coalition and other intervenors, brought a motion that the Board strike a panel of Board Staff to be cross-examined on the assumptions and methodologies utilized in preparing the Supply and Demand Reports and Export Impact Assessments released by the National Energy Board. These reports are prepared pursuant to the Board's mandate under Part II of the National Energy Board Act which requires the Board to "study and keep under review matters over which Parliament has jurisdiction relating to the exploration for, production, recovery, manufacture, processing, transmission, transportation, distribution, sale, purchase, exchange and disposal of energy and sources of energy in and outside Canada."
>
> CanStates Gas Marketing has relied upon a series of Board documents in this Application and has adopted those documents as its own evidence. There seem to be three of those National Energy Board reports that have been the focus of attention in the cross-examination thus far. The first of these is the Board's first Export Impact Assessment published in November 1989. A review of that document indicates that the underlying assumptions and the methodology employed were both clearly described in that report and in the National Energy Board's 1988 Supply and Demand Report which provided the basis for the subsequent 1989 Export Impact Assessment Analysis.
>
> The second document which has been addressed in cross-examination is the 1992 draft Export Impact Assessment released by the National Energy Board in September of that year. The substance of the Board's draft 1992 Export Impact Assessment is contained in the four chapters at the beginning of that document, not the attachment to that document.
>
> The attachment is, in fact, the Board's 1989 Export Impact Assessment which was reproduced in the 1992 draft Export Impact Assessment for reference purposes only. The assumptions and underlying methodologies used by the Board in preparing the 1992 draft Export Impact Assessment were clearly described in that report and in its companion document, the Board's 1991 Supply and Demand Report. The Board would refer parties to page 2-14 of the 1992 draft Export Impact Assessment.

The third Board report that has received attention in this Hearing is the National Energy Board's July 1994 Supply and Demand - Trends and Issues Report. As parties are aware, the July 1994 report will be followed by the Board's 1994 Supply and Demand 1993-2010 Technical Report which will be released later this year. That Technical Report will embody the Board's next Export Impact Assessment.

The content of that Technical Report is presently undergoing final editing, layout, and translation into French and has therefore not been released. As that report, in its English form, has been placed before the Board and the Board is aware of the contents of the document, the Board has decided to release the relevant chapter on gas supply to the public at this time, by filing it as an exhibit in the context of this hearing. This chapter contains the underlying assumptions and the methodologies utilized in preparing the material set out in the chapter on natural gas contained in the July 1994 Supply and Demand - Trends and Issues Report. With the release of this document, parties will have all of the information necessary to test the scenarios described in the July 1994 - Trends and Issues Report.

We note that to the extent that Applicants wish to adopt the reports of the National Energy Board, Applicants should be prepared to speak to those reports and draw their own conclusions. Intervenors may cross-examine the Applicants on these reports and their interpretations of the results. Furthermore, intervenors may also provide their own evidence on matters contained in the reports. The 1994 Trends and Issues Report states clearly in the forward that

"the Board recognizes that parties have not had the opportunity to examine or test the findings and conclusions contained in these reports in a public forum. Material from them may be used as part of the evidentiary record in particular regulatory proceedings to the extent that any party chooses to rely on such material, just as it could rely on any public document. In such a case, the material in effect is adopted by the party introducing it. In this respect, there has been no change in the way in which the report is used by the Board."

It is the Board's view that there is sufficient documentation of the Board's assumptions and methods of analysis presented in these documents and their respective companion Supply and Demand Technical Reports for both Applicants and intervenors to fully consider, question and test their contents. There is therefore no need for the Board to strike a panel of Board Staff to be questioned on the content of these reports.

Furthermore, the reports are the reports of the National Energy Board and historically, the staff and Board Members have been viewed as an unified Board. To put Board Staff on the witness stand and subject them to cross-examination would put the Board Members in the difficult position of having to consider the credibility of their advisors, and assess the weight of their evidence. If this were to occur, in the Board's view, the ability of this Board to act as a specialized tribunal in energy matters would be seriously compromised.

Lastly, the Board is cognizant of the argument of CanStates that it has entered the aforementioned reports in evidence, and adopted them as its own. The onus and obligation is on CanStates to defend its evidence under cross-examination. CanStates raised serious objections to Board Staff being placed on the witness stand to, in essence, answer questions on CanStates' evidence.

For all of these reasons, the Board has decided to refuse the motion of Rocky Mountain Ecosystem Coalition and to enter as an exhibit Chapter 6 of the 1994 Supply and Demand 1993-2010 Technical Report.

2.9 Upstream Environmental Effects

On the twelfth day of the oral hearing, Mr. Norman Conrad, Barrister and Solicitor, appeared on behalf of Rocky Mountain EcoSystem Coalition and requested that he be permitted to make argument that the Board should hear evidence on the upstream environmental and socio-economic effects during this portion of the proceedings. The Board had written to parties prior to the start of the oral hearing informing them that in discharging its responsibilities pursuant to the EARP Guidelines Order, the Board must first decide on the scope of the assessment to be undertaken for each proposal. The Board entertained the issue during the oral hearing and ruled that issues with respect to upstream environmental impacts could not be addressed until the Board had decided on whether or not a direct connection or necessary proximity existed between any new upstream facilities and the export proposals. The Board solicited views of the parties and decided that Mr. Conrad would be permitted to bring his motion. The parties argued on the motion and the Board's ruling is set out below.

The thrust of Mr. Conrad's argument was that the procedures that we have been following are unfair as a result of the Board's restrictions on the Intervenors' right to cross-examine witnesses in relation to environmental impacts.

When asked for specifics, he did not give any examples of how the admission of evidence related to the consequences of actions or facilities, or the impact of actions or facilities, would assist anyone in arriving at a determination of one of the issues at stake; that is, is there a direct connection or a necessary proximity between any new upstream facilities or activities and the proposed exports.

On page 2273 of the transcript, Mr. Conrad stated that the problem Intervenors are having is that the Applicants, rather than the Intervenors, have knowledge of where the drilling for gas will occur, where the gas will be obtained, where it will be transported, where and when it will be marketed, for what price, and under what circumstances.

These concerns are all matters that the Board has allowed as proper matters to be explored during this Hearing.

The Board found Mr. Davies' argument particularly persuasive when he gave the example of a gas plant which would clearly have been directly connected to an export, even though it would not have generated any negative impacts or consequences.

The example illustrates that whether there are environmental and socio-economic effects or consequences is not determinative and not even helpful in looking at the direct connection issue.

The Board notes that a number of Intervenors have indicated that they can now demonstrate direct connection. The established procedure allows them to do just that. However, it would be patently unfair to all parties for the Board to make a decision on this aspect of the hearing at this point.

The Board still has an open mind on the issue, having not even heard the evidence or cross-examination of one Application, nor the evidence of Intervenors, nor the arguments of anyone.

Furthermore, the Board, as an administrative tribunal, is entitled to set its own procedures, so long as those procedures are fair and allow for the meaningful participation of all parties. Mr. Conrad has agreed that the Board is entitled to this flexibility.

In the interests of fairness and an efficient use of time, the Board has determined that this phase of the proceeding is not the proper time for evidence of environmental impacts or consequences to be led.

The issue of direct connection must be established and decided upon first, in order for parties to know what new upstream facilities and activities, if any, the Board considers to be connected to the proposed exports.

For these reasons, generic information on the environmental and socio-economic impacts and consequences related to gas production is not an effective use of the tribunal's time and could possibly create a prejudice.

Having listened to and carefully considered all of the arguments presented on the motion, we have not been persuaded that our process is unfair, nor have we been persuaded that it is necessary for us to expand the information base in order to arrive at a reasoned decision on the direct connection issue.

The procedure that we have implemented is fair and allows parties to enter evidence and to test the evidence of others on all of the issues that are germane at this point in the process.

The motion is accordingly denied.

2.10 Further Motion for Adjournment

On the fourteenth day of the oral hearing, Mr. Sawyer requested an adjournment of two days to review the detailed supporting information pertaining to Western Gas' overall gas supply. The Board adjourned early for its mid-day break to allow Mr. Sawyer time to look at the documents to determine their nature and extent. After doing so, Mr. Sawyer renewed his request for an adjournment of two days. The Board ruled as follows:

> Mr. Sawyer, this is what we have decided. We are not prepared to adjourn a Hearing that has already dragged on for a very long time. Parties received notice five months ago of this Hearing, and this particular information goes back some six weeks.
>
> But to accommodate your special needs, what we are prepared to do is for you to continue your cross-examination in other areas this afternoon. Then we will move to Intervenor Evidence.
>
> We will make this room available on the weekend. It is normally closed up, but we will make sure that there is someone in here so that you and your team of experts can come in and do the spot checks that you referred to.
>
> And then, should you feel that you have discovered something and want to cross-examine this Panel, we will ask Mr. Samuel to bring the appropriate person or persons back, since we will be here next week anyway, to put those questions to them.

Mr. Sawyer subsequently declined to use the opportunity provided.

2.11 Motion for a Section 21 Review

During the course of the oral hearing, RMEC requested a review of the MBP pursuant to Section 21 of the Act. The Board ruled as follows:

> Mr. Sawyer, our understanding is that this panel would not have the authority to grant you such a review; that is a decision of the full Board. There would be a proper way of bringing such a review to the full Board, along with the grounds for the review.
>
> In other words, what we are saying is, if you want to proceed in that way, you would have to address your Section 21 review to the Secretary of the Board, along with the supporting material.

2.12 Other Matters

Mr. Wolf brought forward additional matters later in the hearing. The Board's rulings were as follows:

> Mr. Wolf raised several issues on September 22, 1994 (Transcripts, Volume 9, commencing at page 1408) some of which we understand to be motions and others we understand to be more properly raised in argument or during other phases of the hearing.
>
> Some of the matters are merely comments on the proceedings and Mr. Wolf has not requested a remedy.
>
> We will deal here with those matters raised which we understand to be motions.

Mr. Wolf has requested information concerning the employment of an "N.J. Stewart". He has not demonstrated that this information would have any relevance to this hearing. The request is therefore denied.

He has raised the issue of Mr. Priddle's participation in this hearing. That matter has already been addressd [sic] and we don't propose to re-open it.

Finally, Mr. Wolf has asked for more than one opportunity to present his concerns and positions of the groups he is representing in this hearing. He cites as reasons for this request, certain medical conditions and the interests of fairness. At his request, we have already permitted him this opportunity once.

Also at his request, we have allowed him to move down the list of parties so that his cross-examination and other participation in the hearing occur after that of some of the other parties.

It has not been demonstrated to us that he requires additional opportunities to cross-examine witnesses or to otherwise participate in these proceedings.

For these reasons, the Board will not give him a blanket authorization to have multiple opportunities to cross-examine witnesses or to otherwise present his case.

Mr. Wolf sought to challenge the applicants' title to natural resources, arguing that title had been improperly obtained from native peoples and that resources were being unlawfully removed from beneath Waterton Park. On several occasions throughout the proceedings, the Board invited Mr. Wolf to develop his arguments and cross-examination and to submit evidence in support of his position however what little evidence and argument he attempted to lead was, at best, incoherent. The allegations were left undeveloped and unproven.

Chapter 3

Environmental Screening

The EARP Guidelines Order requires the Board to undertake an environmental screening where a proposal has the potential to have an environmental effect upon an area of federal jurisdiction. Prior to undertaking the screening, it is necessary that the Board decide the scope of the screening. The Board considered the scope of the screening to be undertaken in relation to a gas export application in the GH-5-93 Review[1]. In the Reasons in the GH-5-93 Review, the Board considered the scope of its obligations under the EARP Guidelines Order, and the comments of the Supreme Court of Canada in both the *Oldman River Dam* decision[2] and the *Hydro-Québec* decision[3]. The Board came to the conclusion that it had jurisdiction to consider the environmental effects and directly related social effects of upstream facilities and activities where, in specific instances, there was the necessary connection or proximity between those upstream matters and the proposal to export gas.

As a result of the GH-5-93 Review decision, the Board issued, in this case, Appendix V to Hearing Order GH-3-94, as amended by AO-1-GH-3-94, seeking evidence on the nature of any connection between any new upstream facilities or activities and the requirements of the export proposals. CanStates, Chevron, Renaissance and Western Gas (the "Applicants") filed submissions in response to the Board's request. Evidence was also filed as a result of the information requests of some of the intervenors. As well, the Applicants presented evidence on the nature of the connection in the course of their oral testimony, and submissions on the question of whether or not there was a necessary connection were made by the Applicants and intervenors.

3.1 Submissions

3.1.1 Applicants

The Applicants submitted that there was no necessary connection or proximity between any of the gas supply relied upon by them and any new upstream facilities or activities. They relied on the fact that the gas to be used to underpin the applied-for licences would come from corporate supply pools or supplies not directly connected to any particular export or domestic market. In most instances, the activities related to the exploration, development, processing and transmission of the gas had already occurred and environmental effects had already been assessed and had occurred. It was further pointed out by the Applicants that upstream facilities and activities in Alberta are comprehensively and strictly regulated by the Alberta Energy Resources Conservation Board ("ERCB") and Alberta Environment.

CanStates submitted that its contracts with some of its producers provided for dedicated reserves, but those reserves were included for regulatory and security purposes only, and the gas could come from any of a large number of sources. Those Applicants who were directly involved in the exploration and development of new gas reserves, namely Chevron and Renaissance, submitted that they were

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[1]Canada, National Energy Board, *Reasons for Decision - GH-5-93 Review* (June 1994).

[2][1992] 1 S.C.R. 3 (SCC).

[3][1994] 1 S.C.R. 159 (SCC).

conducting and would continue to conduct exploration and development programs within the Western Canada Sedimentary Basin ("WCSB") in order to supplement their gas supplies. Those exploration and development activities, including the construction of new facilities, were being undertaken to serve all of the companies' existing and future gas markets, both domestic and export. Furthermore, because of the practice of corporate pooling, these activities would be undertaken irrespective of the applied-for gas exports.

The Applicants submitted that no additional transportation facilities would be required to move the applied-for gas volumes to various points on the international boundary with the exception of a proposed export by Renaissance. In the Bay State export proposal filed by Renaissance, new facilities were required to be constructed on the TransCanada PipeLines Limited ("TransCanada") system. Renaissance submitted that the environmental effects of those facilities had been considered in the GH-2-94 hearing. In light of the underlying principle of the EARP Guidelines Order that duplication in assessments was to be avoided, Renaissance submitted that the Board should not consider the environmental effects of those facilities as part of these proceedings.

3.1.2 Intervenors

Alberta Greens

Alberta Greens submitted that the necessary connection between the requirements of the export proposals and upstream facilities and activities could be found in all of the applications. A continuous linkage existed between exploration, production and exportation and if any one element was absent, the entire sequence of events became meaningless. In addition to the physical connection, Alberta Greens submitted that there were economic, accounting, commercial, business and personnel connections. They asked that the export proposals be referred to a panel review under the EARP Guidelines Order.

Alberta Wilderness Association ("AWA")

AWA stated that the Board has a mandate to review the environmental effects of the licences and should uphold Canada's national and international environmental commitments. The threshold test of molecular traceability, necessary to establish a connection, was in place. Furthermore, AWA submitted there were other tests of connectedness, such as financial. AWA asked that the Board move ahead and exercise its federal environmental responsibility itself, or alternatively, request the Federal Environmental Assessment Review Office ("FEARO") to do so. AWA sought a generic assessment by FEARO of the overall effects of the export licences or, alternatively, that an assessment be undertaken at the land leasing stage.

Canada Greens

Canada Greens argued that since domestic demand is reasonably flat, increased drilling must be as a result of export requirements. Therefore, Canada Greens concluded, a direct relationship could be found between the export licences and upstream activities. It further submitted that a wholesale review can be undertaken without going outside areas of federal responsibility.

Green Alternatives Institute of Alberta ("GAIA")

GAIA was of the view that all facilities or activities required or used, whether or not required, to fulfil a contract, regardless of the degree to which such facilities or activities were used to supply other contracts, should be subject to assessment. At some point in the future, GAIA submitted, a more inclusive assessment would have to be undertaken.

Northwest Conservation Act Coalition ("NCAC")

This American intervenor took the position that public concern warranted referral to a panel review under s. 13 of the EARP Guidelines Order. Furthermore, NCAC submitted, in order for the Board to conduct an adequate environmental assessment, it had to consider all information, including extra-territorial effects, that could have a bearing on the Canadian public interest.

Peter Abramowicz

This intervenor submitted that all of the gas being exported from Canada represents a substantial portion of Canadian gas production. Therefore, Peter Abramowicz concluded, the Board should order a comprehensive review of all of the gas exports and their impacts, including a full review under the EARP Guidelines Order, before granting any export licences.

Rocky Mountain Ecosystem Coalition ("RMEC")

RMEC argued that the Applicants have relied entirely on the molecular test to establish the fact that there was no direct connection. RMEC further argued that this was not adequate and in fact there were many types of direct connection, including contractual, financial and regulatory. RMEC submitted that it was not suggesting that the Board should be involved in upstream regulation, but rather, that the Board needed sufficient information in front of it to deal with environmental impacts. The question before the Board when considering connections, in RMEC's view, should be whether or not part of the infrastructure is being used to support exports.

RMEC submitted that the Board had misconstrued the necessary proximity test. RMEC argued that it is not a test to trigger the EARP Guidelines Order, but rather one of determining federal jurisdiction. Furthermore, RMEC argued, if the direct connection test is seen as a narrow and constraining test, it will render the EARP process meaningless insofar as it relates to the Board exercising its jurisdiction. RMEC stated that the Board must consider the cumulative or total environmental effects on upstream areas related to federal areas of jurisdiction and then should pro rate the amount of that environmental impact to what portion of the corporate pools, or in the largest sense, what portion of the natural gas production from the WCSB, is being proposed for export or is in fact being exported.

RMEC submitted that the onus to establish a direct connection is only on the balance of probabilities, not beyond a reasonable doubt. As to the timeliness of the assessment, the use of the words "before irrevocable decisions are taken" in the EARP Guidelines Order means, in this case, before decisions are taken by the National Energy Board. In RMEC's view, the Board can and should look at upstream effects that have already occurred. RMEC submitted that there is precedent for this approach as, in the case of the *Oldman River Dam*, a panel review was undertaken pursuant to the EARP Guidelines Order after the dam was constructed. Furthermore, RMEC stated, there are incremental impacts of the

operation of existing facilities and these must be considered. Moreover, RMEC submitted that there is no duplication between a federal environmental assessment review process and the provincial process, as provincial environmental impact assessments are not done. As a result, any assessment undertaken by the Board would not be a movement into a provincial area of jurisdiction.

Concerning the gas export applications, RMEC argued that the Board should reach a 12(d) finding under the EARP Guidelines Order and either deny the applications, refer them back for further study or forward them to the Minister of the Environment for a panel review.

RMEC also submitted that the Board had fettered its discretion by failing to make rulings on whether or not questions relating to upstream environmental effects were relevant at the evidentiary portion of the hearing.

Hermiston Generating Company, L.P. ("Hermiston")

Hermiston submitted that upstream drilling activities occur because of general economic conditions. Hermiston further submitted that a necessary connection should only be found in the clear case where, for example, a gas plant on the Canadian side of the border is providing gas to a cogeneration plant a short distance away on the American side of the border.

Northern Lights Society ("Northern Lights")

Northern Lights submitted that there was a necessary connection between the proposals to export natural gas and the projects or activities occurring upstream, and it is both a physical and market-based connection. Northern Lights argued that since the necessary connection exists the gas export proposals should be referred under the EARP Guidelines Order to a panel review. The fact that the Applicants state that there is no connection between planning and downstream facilities does not mean, in Northern Lights' view, that there is no physical connection. Northern Lights argued that the onus should be on the applicant to prove disconnectedness, rather than on the intervenor to prove the connection. Moreover, Northern Lights argued that there is a probability that some gas from any and every source will be consumed at the destination with the result that there is a connection with all facilities.

A number of intervenors made no specific submissions on the necessary connection issue, including Canadian Animal Rights Coalition, Alberta Ratepayers Association et. al represented by Mr. E. Wolf, ProGas Limited, Foothills Pipe Lines Ltd., Alberta Natural Gas Company Limited and Alberta Department of Energy.

Views of the Board

As the Board clearly indicated prior to and during the oral phase of the GH-3-94 proceeding, the hearing would be used to establish whether or not a necessary connection or proximity exists between any new upstream facilities or activities and the requirements of the export proposal. Any environmental assessment of upstream environmental effects would be undertaken at a subsequent date. Despite this fact, numerous parties used the Board's hearing process to enter evidence and make submissions about upstream environmental effects. This evidence was not considered

by the Board. In relation to each of the applications, the question to be addressed at this stage is whether or not there is a necessary connection or proximity between the requirements of the applied-for export licence and any new upstream facilities or activities. If such a connection is found to exist, and the facilities or activities have the potential to have an environmental effect on matters of federal jurisdiction, then an initial assessment will be undertaken.

A number of parties discussed the molecular test as a threshold test to establishing a necessary connection. As was noted by the Board in the GH-5-93 Review decision, in the situation where the gas can be traced from a production facility directly to the recipient facility under the export contract, a necessary connection would appear self-evident. An example of this was noted by Renaissance when it described a situation where a gas production facility was a short distance from the international border and the gas was transported, pursuant to an export licence, directly to a recipient cogeneration facility across the border. In such a case a necessary connection between the requirements of the export licence and the upstream production facilities would be both obvious and irrefutable. However, such an instance would be a rare occurrence. As a result, the Board has found that in most situations the establishment of a molecular connection was of little relevance.

In the GH-5-93 Review decision, the Board outlined the factors it would consider in deciding whether or not the necessary connection or proximity existed between the requirements of the export proposal and upstream facilities or activities. The jurisdictional element was considered. The fact that upstream facilities or activities are within provincial jurisdiction does not mean that there cannot be a necessary connection. Such facilities or activities must have the potential though, to have an environmental effect on matters of federal responsibility, failing which the requirements necessary to trigger the EARP Guidelines Order will not exist.

The temporal element, that is the time at which an activity takes place, is relevant and can be determinative to the establishment of a necessary connection. An environmental assessment must be of some utility and not be duplicative. The assessment of facilities or activities already constructed or undertaken would not be useful and, furthermore, would not satisfy the goal of the EARP Guidelines Order that an environmental assessment occur "as early in the planning process as possible". Therefore, as noted in the GH-5-93 Review decision, the necessary connection can be found only in the case of new facilities or activities. This does not mean upstream facilities or activities will not be assessed. The Board is aware of the fact that the province will have considered the environmental implications of most upstream facilities and activities long before an export licence application is made to the Board.

The Board noted, in the GH-5-93 Review decision, that a necessary connection or proximity between new upstream facilities or activities and the requirements of the export proposal cannot normally be established where the applicant intends to draw upon supply from a number of possible sources within the WCSB. Some intervenors argued that, in such situations, the Board should be able to examine every facility or activity that could potentially contribute to the gas licensed for export. In that way,

these intervenors suggested, the Board would satisfy the requirements set out in the *Hydro-Québec* electricity export case where Justice Iacobucci, writing for the Supreme Court, stated at pages 191-92:

> To say that such [environmental] effects cannot be considered unless the Board finds that, but for the export contracts, the facilities would not be constructed, is to create a situation in which the construction of a generating facility may be contemplated solely for the purpose of fulfilling the demands of a number of export contracts, but because no one export contract can be said to be the cause of the facility's construction, its environmental effects will never be considered... A better approach is simply to ask whether the construction of new facilities is required to serve, among other needs, the demands of the export contract. If this question is answered in the affirmative, then the environmental effects of the construction of such facilities are related to the export.

Relying on these comments from the Supreme Court of Canada decision, it was argued that the Board should undertake an environmental assessment of all upstream exploration and drilling activities carried out by the producers as such activities were being undertaken, at least in part, to satisfy the requirements of the applied-for export licences. At face value, these comments from the Supreme Court would appear to support such an argument. The Board is of the view though, that an examination of the decision cannot stop there. At page 195 of the decision, the Court notes that:

> [The decision making authority of the Board to grant an export licence] does not artificially limit the scope of inquiry to the environmental ramifications of the transmission of power by a line of wire, but it equally does not permit a wholesale review of the entire operational plan of Hydro-Québec... I am of the view that the Board in its decision struck an appropriate balance between these two extremes.

Furthermore, the Board notes that there are differences between the underlying infrastructure of the electricity industry and that of the gas industry. Electricity is provided for domestic and export use from a relatively small number of discrete facilities. Usually these facilities are owned and operated by the party seeking the export licence. Also, the same party often owns and operates the transmission lines required to export the electricity. As a result, one party controls the entire planning process relating to the export, including all of the facilities necessary for production and transmission. On the other hand, and as noted in the GH-5-93 Review decision, the natural gas industry is comprised of producers, supply aggregators, transporters, distributors, marketers, brokers and end users, all acting independently in a free North American natural gas market. The activities of these parties can include geological and geophysical investigation, drilling, production, processing, marketing, transportation, storage, retail distribution and consumption. Gas exploration may be initiated several years, or even several decades, prior to the actual gas marketing.

Natural gas may change ownership several times: at the wellhead of any of over 40,000 producing wells, at any of over 650 gas processing plant inlets or outlets; at the interconnections between different natural gas pipelines; at the city gate or at the location of the end user. The integrated North American natural gas pipeline network means that gas can be injected at any one of thousands of pipeline receipt points and removed at any one of thousands of pipeline delivery points.

In light of the aforementioned comments of the Supreme Court, the Board sees its task as finding the necessary appropriate balance between a consideration of the environmental effects of the movement of gas across the international boundary and a wholesale review of all upstream exploration, production and transportation activities. In striking this balance the Board must be cognizant of the infrastructure of the gas industry and how it differs from that of the electricity industry. This the Board sought to do in the GH-5-93 Review decision.

As described in the GH-5-93 Review decision, there are usually four ways in which gas can be supplied to meet the requirements of an export licence: dedicated supply, non-dedicated supply, corporate supply and aggregator supply:

> ...With a dedicated supply portfolio, specific gas pools, lands or wells which will provide the gas to be exported, are identified in the gas sales contract. With non-dedicated supply, an applicant chooses to rely on an identified list of pools to supply its gas export proposal, but notes that the pools are identified to satisfy regulatory filing requirements and may not, ultimately, be the pools relied upon for the export sale. A corporate supply portfolio is comprised of a listing of pools from which the applicant intends to serve all of its contractual commitments including export, and may contain some or all of the gas supply controlled by a producer. The final type of supply portfolio, aggregator supply, is similar to a corporate supply portfolio, with the difference that it is usually comprised of a large collection of individual gas pools operated by many different producers.

Where the gas will in fact be provided from a corporate pool or a large collection of individual gas pools operated by many different producers, it is unlikely that in most instances a necessary connection will be found. The pools are used to satisfy many diverse requirements, and new facilities and activities occur as a result of general economic conditions and the many existing and anticipated demands of the market. No one pool is usually developed to satisfy a specific export or domestic contract or group of contracts. With non-dedicated supply, the gas is usually provided from a corporate pool with specific identified pools provided only to satisfy regulatory filing requirements. In that instance, the real source of the gas for export is usually the corporate pool.

Each case must be considered on its own facts, but the Board is of the view that for the necessary connection to exist the export licence and new upstream facilities or activities must be integrated to the extent that they can be seen to form part of a single course of action. One situation where a necessary connection is likely to be established is where a contractually dedicated supply portfolio is being used to satisfy the requirements of the proposed export licence. Alternatively, a necessary connection might be found where an application is made to export undeveloped pools in the North. Only if the export licence is approved will the infrastructure necessary for the production and transportation of that gas be established. Similarly, where a new processing plant will be necessary to process the gas a company seeks to export, and its construction is contingent, at least in part, or at that time, on the approval of the export licence, a necessary connection might be found.

Utilizing this analysis the Board has examined the specific facts underpinning each of the applications and assessed the nature of the connection, if any, between each gas export licence application and new upstream facilities and activities to decide if the scope of the initial screening should include an assessment of the environmental effects of those upstream facilities or activities.

CanStates

CanStates has applied for two licences to export natural gas. The first licence application (the "Pool licence") is supported by gas reserves from pools in Alberta owned or controlled by five producers: Anderson Exploration Limited ("Anderson"), Atcor Ltd. ("Atcor"), Dekalb Energy Canada Ltd. ("Dekalb"), Dorset Exploration Limited ("Dorset") and Elan Energy Inc. ("Elan"); and a supply pool comprised of six producers: Altana Exploration Company ("Altana"), Dorset, NuGas Limited ("NuGas"), Phillips Petroleum Canada Limited ("Phillips"), Rife Resources Limited ("Rife") and Tarragon Oil and Gas Limited ("Tarragon") originally serving the Transco Energy Marketing Company ("TEMCO") and Alberta and Southern Gas Company ("A&S") export markets. The second licence application (the "Home licence") is supported by gas reserves from the Alberta corporate supply pool of Home Oil Company Limited ("Home") which consists of 1,069 wells and 495 pools.

The proposed export volumes would be transported to the Alberta/British Columbia border via the NOVA Corporation of Alberta ("NOVA") pipeline system to an interconnection with the Alberta Natural Gas Company ("ANG") pipeline system at the Alberta/British Columbia border near Coleman, Alberta. The gas would then be transported through the facilities of ANG to the Canada/United States border near Kingsgate, British Columbia.

A number of the producers supporting the Pool licence have dedicated certain reserves to supply the requirements of the export contract. Despite this fact, CanStates submitted that the gas could come from any of the producers' supplies under the terms of the gas purchase contracts it has executed with its producers. The dedicated reserves were merely a form of security which could be relied upon by CanStates to ensure adequate supply.

The gas sales contract between Hermiston and CanStates underpins the export application. In that contract, CanStates covenants to provide the requisite gas pursuant to the long-term contracts it has entered into with producers or from other unidentified sources should the need arise. There is no direct contractual arrangement between Hermiston and the many producers supplying the gas to CanStates for export. The nature of CanStates' contractual arrangements, as both buyer and seller, are those of an aggregator. CanStates is obtaining the gas for export from a large number of producers who have no application before this Board and who are, in turn, providing it from a multitude of sources. The Board finds that in this situation there is no necessary connection between new upstream facilities and activities and the requirements of the export licence. No further environmental assessment is therefore necessary under the EARP Guidelines Order.

Chevron

Chevron will be providing the gas for this application from its corporate pool in Alberta constituting approximately 120 pools and 1,000 wells. The gas volumes proposed for export will be transported from the processing plants through the same pipeline facilities as described for CanStates.

As Chevron is relying on its corporate supply pool, the Board finds that in this instance there is not the necessary connection to require any further environmental assessment of any new upstream activities or facilities. Any such facilities or activities will be undertaken to serve the range of present and future domestic and export requirements of the corporate gas pool.

Renaissance

Renaissance has applied for two export licences. The first is the application for export to AmGas Inc. ("AmGas") and the second is the application for export to Bay State Gas Company ("Bay State") and Northern Utilities, Inc. ("Northern Utilities").

The source of the gas for the proposed export to AmGas will be Renaissance's corporate pool which is made up of over 1,000 wells. Renaissance submitted non-dedicated reserves, for regulatory purposes only, and those submitted reserves constitute only a small part of Renaissance's corporate gas supply. Any new upstream facilities would be installed as part of ongoing development of the corporate supply pool. No new facilities would be required for the purposes of the proposed export.

The gas to be exported to AmGas would be transported to the interconnection with Foothills Pipe Lines Ltd. ("Foothills") at McNeill, Alberta, via the NOVA system. Foothills will transport the gas from McNeill, Alberta, to the Saskatchewan/United States border near Monchy, Saskatchewan. No new transportation facilities are required on either the NOVA or Foothills pipeline systems.

The Board finds that there is no necessary connection or proximity between the requirements of the proposed export to AmGas and any new upstream facilities or activities as the gas to be exported will be coming from the corporate supply pool of Renaissance. Furthermore, no new transportation facilities are required. Therefore, no further environmental assessment of the application is necessary.

The source of the gas to be exported to Bay State and Northern Utilities is similar. Again, some non-dedicated pools were provided for regulatory purposes. These pools form a small part of the corporate supply pool relied upon by Renaissance. No new upstream facilities are required for the purposes of the proposed export. Any new facilities installed will be as part of the ongoing development of the corporate supply pool.

The gas to be exported will be transported to the interconnection with TransCanada at Empress, Alberta, via the NOVA system. TransCanada will transport the gas from Empress, Alberta, to the Ontario/United States border near Niagara Falls, Ontario. No new transportation facilities are required on the NOVA pipeline system. New facilities will be required on the TransCanada system but these facilities were assessed and approved by the Board in the GH-2-94 hearing.

The Board finds that there is no necessary connection between the requirements of the proposed export to Bay State and Northern Utilities and any new upstream facilities or activities as the gas to be exported will be coming from the corporate supply pool of Renaissance. Furthermore, no new transportation facilities are required. Therefore, no further environmental assessment of the application is necessary.

Western Gas

Western Gas is an aggregator and will be drawing on gas it has contracted from over 700 producers. The contracted reserves encompass approximately 8,500 pools and over 20,000 wells. Most of the pools are located in Alberta. No new upstream facilities will be required as a result of the applied-for export.

The gas will be transported from the processing plants to the interconnection with TransCanada at Empress, Alberta, via the NOVA system. TransCanada will transport the gas from Empress, Alberta, to the Manitoba/United States border near Emerson, Manitoba. No new transportation facilities are required on either the NOVA or TransCanada pipeline systems.

As Western Gas is relying on its aggregated supply pool, the Board finds that there is no necessary connection between the requirements of the export proposal and any new upstream facilities or activities. Furthermore, no new transportation facilities are required and therefore, there is no need to undertake a further environmental assessment.

Chapter 4

Market-Based Procedure

The Board, in considering an export application, must take into account section 118 of the Act, which requires the Board to have regard for all considerations that appear to it to be relevant and, in particular, that the Board satisfy itself that the quantity of gas to be exported does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada having regard to the trends in the discovery of gas in Canada.

In July 1987, pursuant to a *Review of Natural Gas Surplus Determination Procedures* ("GHR-1-87"), the Board implemented a new procedure, known as the Market-Based Procedure ("MBP"), founded on the premise that the marketplace would generally operate in such a way that Canadian requirements for natural gas would be met at fair market prices.[1]

The MBP provides that the Board will act in two ways to ensure that natural gas to be licensed for export is both surplus to reasonably foreseeable Canadian requirements and in the public interest: it will hold public hearings to consider applications for licences to export natural gas, and it will monitor Canadian energy supply and demand, and markets, on an ongoing basis.

4.1 Public Hearing Component

The public hearing component of the MBP provides that the Board consider:

- complaints, if any, under the Complaints Procedure;
- an Export Impact Assessment ("EIA"); and
- any other considerations that the Board deems relevant to its determination of the public interest.

The following description of these three components is general in nature and applies to each application heard
in GH-3-94.

4.1.1 Complaints Procedure

The basic premise of the Complaints Procedure is that, in a market which is working satisfactorily, Canadian purchasers will be able to obtain domestic natural gas supplies under contract on terms and conditions, including price, similar to those offered to purchasers under the proposed export arrangements. In order to test whether the market is in fact working in this manner, in the GHR-1-87 Decision the Board stated that:

[1] The MBP was modified following subsequent public hearings GHW-4-89 and GHW-1-91.

"The inclusion of a complaints mechanism in the new surplus determination procedures is based on the principle that gas should not be authorized for export if Canadian users have not had an opportunity to buy gas for their needs on terms and conditions similar to those of the proposed export. Applicants for export licences will have to be prepared to address any concerns on this score which may be identified in the complaints procedure ...."

The Complaints Procedure seeks to ensure that Canadian gas buyers who have been active in the market have access to gas on terms and conditions no less favourable than export customers. The Complaints Procedure enables these buyers to assess the terms and conditions of the gas sales contracts underlying export licence applications relative to the terms and conditions they are able to obtain from suppliers. If the terms and conditions being offered to export customers are more favourable than those available to domestic customers, a Canadian buyer may wish to file a complaint with the Board. The Board would adjudicate each complaint on the basis of an assessment of whether, as a matter of fact, the complainant has or has not been able to obtain additional gas supplies on terms and conditions, including price, similar to those contained in the gas export licence application submitted to the Board.

Domestic gas purchasers who wish to file a complaint must demonstrate that they have attempted to contract for additional gas supplies and that they have not been able to obtain such supplies on terms and conditions similar to those contained in the gas sales contract. At the same time, export licence applicants are expected to respond to concerns expressed by a complainant. If the Board were to find that a complaint is valid, it would then have to determine what action needs to be taken to remedy the situation. This could involve a delay in the licence proceeding, a denial of the export licence application or some other action appropriate to the circumstances of the particular application.

4.1.2 Export Impact Assessment

The purpose of the EIA is to allow the Board to determine whether a proposed export is likely to cause Canadians difficulty in meeting their energy requirements at fair market prices. The EIA does not contemplate the Board having a view on the desirability of any particular volume of exports or price level for Canadian gas. Rather, the intent is to focus on whether the Canadian energy market can adjust to incremental gas exports without causing Canadians difficulty in meeting their energy needs at prices determined in the market.

Applicants and intervenors have the option of using the Board's analysis or of preparing and submitting their own analysis.

The Board has produced one EIA, dated September 1989, which is based on several projections of exports. The study, which was prepared in consultation with the energy industry and other interested parties, featured analyses of long-term natural gas supply, demand, prices and export levels and provided a statement of the assumptions and explanation of the analytical techniques used.

On 3 September 1992, the Board released a draft EIA and announced that it was planning to convene an EIA workshop to promote discussion and exchange information. The workshop took place in April 1993 and a summary of the discussions was released in June 1993. Subsequently, on 8 December 1993, the Board announced changes to the EIA process. It stated that, commencing with the next supply and demand report, the Board would include in those reports an analysis of the long-term implications of alternate export levels for Canadian markets. These reports would be supplemented by

assessment of market adjustment issues in the Board's Natural Gas Market Assessment ("NGMA") reports.

The Board's second EIA will be included in Chapter 6 of the 1994 technical report of its supply and demand analysis. A draft of Chapter 6 was released during the GH-3-94 proceeding.

In the GH-3-94 proceeding three applicants, namely CanStates, Chevron and Renaissance, adopted the Board's EIA, dated 7 September 1989 which was included in the Board's Reasons for Decision on a *Proposed Amendment to Export Impact Assessment Filing Requirements* dated November 1989. Western Gas chose to rely on the Board's draft EIA dated 3 September 1992.

4.1.3 The Other Public Interest Considerations

As part of its assessment of the other public interest considerations, the Board normally:

- makes an assessment of the likelihood that licensed volumes will be taken;
- makes an assessment of the durability of gas sales contracts;
- has regard to whether gas sales contracts were negotiated at arm's length;
- verifies that there is producer support for a gas export application;
- verifies that there are provisions in the gas sales contracts for the payment of the associated transportation charges on Canadian pipelines over the term of the gas sales contract; and
- determines the appropriate length of term for an export licence, having regard to:

(i) evidence on the adequacy of the gas supply available to the export licence applicant to support the applied-for volumes over the requested licence term;

(ii) evidence on the necessity of the requested term in light of the terms of the associated gas sales and transportation contracts and the terms of the approvals from other regulatory bodies; and

(iii) any other evidence which the Board deems to be relevant to the appropriate term of the licence.

The above statement on the other public interest considerations provides guidance to parties as to the considerations the Board normally has regard to in assessing the merits of gas export licence applications. However, in the context of each specific export licence application, the Board has regard to whatever factors that appear to it to be relevant to the Canadian public interest.

In assessing the considerations above, the Board takes into account information regarding gas supply, transportation, markets, sales contracts and the status of regulatory authorizations. This information is provided by applicants in response to the information filing requirements of the *National Energy Board Part VI Regulations* (the "Regulations") and during the public hearing process.

Gas Supply

In its assessment of gas supply, the Board reviews the contractual arrangements pertaining to supply and the adequacy of both reserves and productive capacity.

In making its assessment of the adequacy of gas supply available to the export licence applicant to support the applied-for volumes over the requested licence term, the Board is flexible but normally expects applicants to demonstrate that established reserves are equal to or exceed the applied-for volume and that productive capacity is adequate to meet the proposed annual export volumes over the majority of the applied-for licence term.

Each applicant is required to provide an estimate of established reserves which can be assessed against its requirements including the proposed export. The Board conducts geological and engineering analyses of each applicant's gas supply in order to prepare its own estimates. A review and an assessment of the ownership and contractual status of all pools included in the applications are also done.

The Board uses its estimate of reserves, along with basic deliverability data for each pool submitted, in preparing its productive capacity projections. These projections are generally adjusted to reflect production at the annual level of requirements. The requirements shown in the productive capacity figures are usually based on an annual load factor of 100 percent and may therefore somewhat overstate each applicant's actual supply requirements.

Where an export is being supplied from a corporate supply pool, the Board will examine the make up of that pool, its established reserves and productive capacity, and other sales commitments to be served from the same supply pool. Similarly, where corporate warranties are used to backstop a supply arrangement, the Board will examine the likely availability of this supply, including any contractual commitments.

Transportation

Regarding the transportation arrangements underpinning an export project, the Board reviews the status of all transportation arrangements, including contracts, either in final form or as precedent agreements. The Board also considers the term and contracted capacity of the transportation arrangements.

Markets

The applications dealt with in GH-3-94 are for sales to two types of end-use markets: sales for system supply and sales to a cogeneration facility, which is defined as a facility that produces electricity and thermal energy for use in commercial or industrial operations. The Board's review of these types of markets includes consideration of the following for each market type:

- for exports for system supply, consideration of the purchaser's current and projected requirements and supply portfolio, and the role of the Canadian gas supply within that portfolio; and,

- for exports to a cogeneration facility, consideration of the contractual chain, from the gas sales contract to the power and thermal sales contracts.

For each type of end-use market, the review includes consideration, among other items, of the load factors at which the proposed exports are expected to flow.

Sales Contracts

The Board's review of the contractual arrangements includes consideration of the contractual obligations between the Canadian sellers and the U.S. buyers, including executed gas sales contracts. The Board's review also includes an examination of any resale arrangements that occur beyond the international boundary sale point, where such arrangements have a direct effect on the international sales agreement.

Status of Regulatory Authorizations

The Board reviews the status of pertinent regulatory authorizations in Canada and the U.S., including provincial removal authorizations and Department of Energy, Office of Fossil Energy ("DOE/FE") import authorization.

The Board's review also includes evidence of producer support and the status of any necessary state regulatory commission approvals.

4.2 Ongoing Monitoring

There are two components to the Board's ongoing monitoring part of the MBP:

- assessments of Canadian energy supply and demand; and
- natural gas market assessments.

4.2.1 Assessment of Canadian Energy Supply and Demand

The NEB Act requires the Board to keep under review the outlook for Canadian supply of all major energy commodities, including electricity, oil and natural gas and their by-products and the demand for Canadian energy in Canada and abroad. As part of this function, the Board, since its inception, has prepared and maintained forecasts of energy supply and demand and has, from time to time, published related reports after obtaining the views of provincial governments, industry and other parties. The first volume of the Board's 1994 report, titled *Canadian Energy Supply and Demand 1993-2010 - Trends and Issues* ("Trends and Issues"), was released in July 1994. The companion technical report and appendices are scheduled to be released in December 1994. However, as discussed in Chapter 2 of these Reasons, the Board released a draft of the natural gas chapter of the technical report during the GH-3-94 proceeding in order to make the underlying assumptions and methodologies utilized in preparing the material contained in the natural gas chapter of the Trends and Issues report available to parties in the hearing.

Among the matters analysed in the draft chapter of the technical report are the trends in discovery of oil and gas in Canada, the evolving shares of the energy market served by the various energy forms and the implications for the adjustment of the natural gas market in response to alternative supply and demand assumptions.

4.2.2 Natural Gas Market Assessment

As a second part of its ongoing monitoring, the Board analyses shorter-term developments in natural gas supply, demand and prices and periodically publishes reports on its findings.

The focus of these reports is narrower and shorter term than that of the supply and demand reports. They typically focus on one aspect of the market which is of current interest. For example, in late 1993 the Board released two NGMA reports. One report focussed on natural gas deliverability over the 1993 to 1996 period. The other report provided a description of the mechanisms used by market participants to adjust to short-term market tightness. Generally, the NGMA reports provide coverage of: recent developments and near-term prospects for natural gas markets, competitive activity in the market, pipeline utilization for Canadian and export purposes, and the quantity and quality of gas supply.

4.3 The Determination of Surplus by the MBP

In summary, the Board determines that the gas to be exported is surplus to Canadian needs if:

- there are no complaints registered under the Complaints Procedure;
- the EIA shows that Canadians will have no difficulty in meeting their energy requirements at fair market prices;
- there are no other major public interest concerns in the view of the Board; and
- ongoing monitoring suggests that markets are functioning normally and does not identify other issues relating to the evolution of supply or demand which cast doubt on the future ability of Canadians to meet their energy requirements.

Views of Intervenors

A major issue raised in the hearing was that the Board had erred in applying the MBP. One intervenor, Canada Greens, submitted that by adopting the MBP and the EIA, the Board had replaced section 118 of the Act and the Regulations. RMEC raised a similar issue throughout the proceeding, and argued that the Board was fettering its discretion and thus acting *ultra vires*:

(i) by applying a general policy (the MBP), and then failing to exercise the discretion accorded to it under the Act; and

(ii) by relying on previous Board decisions.

RMEC cited the following passage from a law text in support of its position (*Administrative Law in Canada*, Sarah Blake (Butterworths)):

> However, the tribunal cannot fetter its discretion by treating the guidelines as binding rules and refuse to consider other valid and relevant criteria in the exercise of its discretion. The discretion is given by statute, and the formulation and adoption of general policy guidelines cannot confine it.

As further support for its position, RMEC cited the case of *Gregson v. National Parole Board*, [1983] 1 F.C. 573 (T.D.) in which, according to RMEC, the Federal Court overturned a Parole Board ruling where the Board had merely followed a policy and had not considered the merits of the particular case before it.[1]

Specifically, RMEC stated that the Board had not given any direction in the record of the proceedings which would constitute an authorization as contemplated in subsection 4(2) of the Regulations to dispense with the provision of the information listed in subsection 4(2). RMEC was of the view that the Board, in applying the MBP (a policy) failed to exercise its discretion and therefore the Board fettered its discretion.

While RMEC stated that it is not objectionable for the Board to follow its own decisions, it argued that the Board must not view them as binding precedent. RMEC suggested that the Board should be flexible to adjust to new situations and that the principle of *stare decisis* does not apply to the Board's decisions.

In addition to their legal concerns, Alberta Greens, Canada Greens, and RMEC argued that a determination of whether or not the gas to be exported was surplus to the reasonably foreseeable needs of Canadians could not be made under the MBP. Their arguments focussed both on the general concept of a market-based determination and on specific aspects of the MBP itself.

RMEC and Alberta Greens argued that market forces do not provide energy security for Canadians but rather, in their view, market-based processes are concerned with the short-term stimulation of the producing industry. In support of this position they pointed out that the operation of market forces has resulted in additions to reserves which have been lower than annual consumption over recent history in both Canada and the U.S.

Some intervenors also raised concerns with respect to the individual components of the MBP.

RMEC expressed the view that the Complaints Procedure is flawed in two ways. First, RMEC argued that the Complaints Procedure is not accessible to citizens but rather industrial gas buyers. Second, RMEC argued that the Complaints Procedure

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[1] The Board notes that, in fact, the Federal Court Trial Division upheld the Parole Board's finding.

only deals with the market situation at the time of the hearing, and lacks a temporal element whereby the Board considers complaints relating to the market situation in the foreseeable future.

Alberta Greens and RMEC raised concerns regarding the EIA component of the process. They took the position that the assumptions, methodology and analysis of the Board's EIAs could not be tested within the hearing context because the Applicants were not familiar with the material upon which they were relying and could not adequately defend the Board's reports. As described in Chapter 2 of these Reasons, RMEC requested that a panel of Board staff, who had been responsible for the preparation of the reports, be put under oath and be subjected to cross-examination of the basic premises of the reports and thereby provide the intervenors with an opportunity to test the assumptions. Moreover, RMEC expressed concern that the Applicants would be allowed to adopt Board reports, but Board staff was not available to speak to the reports despite the intervenors' right to test the evidence.

Alberta Greens and RMEC also expressed concern about the adequacy of future supply to meet Canada's energy requirements. For example, Alberta Greens pointed out that from 1980 to 1992 the average size of pools, based on reserves, dropped by 77 percent. Considering this declining trend in pool size, Alberta Greens estimated that, in order to meet demand to the year 2010, 50 percent more wells must be drilled than the total number of wells drilled since 1946. Alberta Greens also expressed the view that the increased amount of required drilling would lead to a significant rise in drilling costs. Trends estimated by the Alberta Greens suggest that supply will not be adequate to meet requirements by 2010 or 2015 which, in its view, clearly lie within the reasonably forseeable future.

However, another intervenor, Hermiston, disagreed with the gas supply concerns raised by the Alberta Greens and RMEC, and noted that none of the domestic gas utilities were present at the hearing despite their statutory obligations to ensure adequate and reasonably priced supplies for the long term for the residents within their franchise areas. Therefore, Hermiston concluded that domestic gas utilities did not have a concern that there would be a shortfall in supply as projected by the other intervenors.

Alberta Greens and RMEC also questionned the Board's estimate of ultimate potential and challenged the graphical representation, showing the growth in estimates of ultimate potential through time, in the Trends and Issues report, on the basis that it was merely conjecture as to what the possible trends in ultimate potential might be.

Views of Applicants

In response to arguments that the Board had fettered its discretion, Chevron submitted that this applies only to how the Board makes its decisions and not the process or the procedures the Board utilizes in arriving at its decisions. Moreover, Chevron argued that there is no fettering of discretion where the Board relies on a policy which outlines tests to be applied and where the Board applies those tests to the evidence with an open mind.

Turning to the issue of subsection 4(2) of the Regulations raised by RMEC, Chevron argued that the Board has full discretion as to what information it requires.

As to whether or not the market-based process was working, the Applicants were unanimous in their belief that it was working well in the interests of all Canadians. They stated that the Canadian and Alberta natural gas markets were functioning properly. Western Gas pointed out that the Board has always, since long before deregulation and the implementation of the MBP, established generic procedures and evidentiary requirements that it considered would meet the requirements of section 118 of the Act. Western Gas submitted that parties to export licence applications should not have to litigate the various components of section 118 of the Act every time a licence is sought. Western Gas further submitted that the Board's decision to apply the MBP was not open for review in the GH-3-94 proceeding and that the Applicants' only burden was to meet the requirements of the MBP and not to justify it.

Each of the Applicants argued that it had fully met the requirements of the MBP; namely, the three public hearing components.

The Applicants pointed out that there were no complaints registered with respect to the export applications. Moreover, Chevron cited a lack of complaints as one of the most significant factors in the Board's determination under section 118 of the Act. Renaissance added that a lack of complaints signified that Canadian buyers are not having difficulty contracting for their reasonably foreseeable gas requirements and that therefore, the Board's obligations under section 118 of the Act had been met.

With respect to the EIA component, the Applicants understood that they could adopt EIAs prepared by the Board in order to satisfy that aspect of the MBP. However, Chevron stated that the Board, when considering the dynamic nature of the EIA process, was entitled to take into account other information raised in the GH-3-94 hearing and its own expertise, and was not limited to paying regard only to the EIA relied upon by the individual applicant. Moreover, the Applicants submitted that the evidence indicated that the proposed exports are not likely to cause Canadians any difficulty in meeting their energy requirements at fair market prices. Western Gas, for example, argued that the volume of its proposed licence would not be a significant addition to the levels of exports projected in the EIA models and would not cause adjustment difficulties since the volume is less than one percent of Canadian productive capacity.

Views of the Board

The concerns expressed by intervenors regarding the MBP generally fell into two categories: the legality of the Board's procedures and other legal issues; and, the technical aspects of the MBP components. The Board will first address the legal aspects of those arguments and will then turn to the technical issues raised in regard to the individual components of the MBP.

RMEC raised the concern that, in applying a general policy such as the MBP, the Board had failed to exercise the discretion accorded to it in the Act. Section 118 of the Act gives broad discretion to the Board in that it provides that the Board "shall have regard to all considerations that appear to it to be relevant" when considering an application for a licence to export natural gas. The section also requires the Board to "satisfy itself that the quantity of oil or gas to be exported does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada having regard to the trends in the discovery of oil or gas in Canada." The Board felt that it was important to establish and publicize the policy with respect to the determination of surplus in order to provide a predictable environment for the consideration of licence applications. In 1987 the Board adopted the MBP as the process required to comply with Section 118 of the Act. This process and its various components were established and evolved following extensive reviews involving public input. The MBP and its components are well known and are embodied in public documents.

Case law permits the development of policies such as the MBP. Two of the leading cases on the issue of an administrative agency developing and applying policies and guidelines are *The King v. Port of London Authority, [1919] 1 K.B. 176 (C.A.)* and *Capital Cities Communications Inc. et al v. Canadian Radio-Television Commission et al*, [1978] 2 S.C.R. 141, 81 D.L.R. (3d) 609, 18 N.R. 181. In the latter case, Mr. Chief Justice Laskin, writing for the majority of the Supreme Court, held as follows (at page 629 of the D.L.R. version):

> In my opinion, having regard to the embracive objects committed to the Commission under s.15 of the Act, objects which extend to the supervision of "all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy enunciated in section 3 of the Act", it was eminently proper that it lay down guidelines from time to time as it did in respect of cable television. The guidelines on this matter were arrived at after extensive hearings at which interested parties were present and made submissions. An overall policy is demanded in the interest of prospective licensees and of the public under such a regulatory regime as is set up by the *Broadcasting Act*. Although one could mature as a result of a succession of applications, there is merit in having it known in advance.

In the *Port Authority* decision Bankes L. J. found a policy to be appropriate when it is adopted for reasons the tribunal may "legitimately entertain" and its application is considered in each case. As is evident from the above, it is appropriate for boards with regulatory mandates such as the NEB, to develop policies to facilitate the implementation of their mandates.

With respect to RMEC's concern that the Board had improperly relied upon previous Board decisions, the Board disagrees. The Board is cognizant that while there is merit in consistency, it is not bound by its own previous decisions.

The Board has considered all of the representations and evidence submitted by intervenors in these proceedings. For example, the Board did not limit parties from putting forward evidence on the issue of surplus of supply. The Board heard and weighed argument as to the appropriateness of its policies. Based on the evidence and arguments before it in this case, the Board was not convinced that it should depart from applying the established policies and guidelines to these applications. Furthermore, the Board has not been persuaded that it is incorrect in finding that the application of these policies and guidelines to the evidence submitted in these proceedings satisfies the requirements of section 118 of the Act.

Alberta Greens and RMEC argued that the Board may not authorize applicants to dispense with filing information, set out in the Regulations, through the application of a broad policy, namely, the MBP. No authority was cited for this proposition. The portions of the Regulations brought into contention by intervenors are as follows:

> *Part VI Regulations*
>
> *Information to be Furnished by Applicant for Licence to Export Gas*
>
> 4(1) Every applicant for a licence for the export of gas shall furnish to the Board such information as the Board may require.
>
> (2) Without restricting the generality of subsection (1), the information required to be furnished by any applicant described in subsection (1) shall, unless otherwise authorized by the Board, include...
>
> (j) evidence to demonstrate that the volume of gas to be exported is surplus after due allowance has been made for the reasonably foreseeable requirements for use in Canada having regard to the trends in the discovery of gas in Canada;....

The Board notes that several intervenors expressed views that the Applicants did not meet the requirements of paragraph 4(2)(j) of the Regulations. This paragraph is not substantive in nature; it embodies a filing requirement, a filing requirement with which the Board may dispense. The substantive provision concerning the surplus issue is found in section 118 of the Act, a provision that the Board may not dispense with. In any event, the Board does not purport to substitute the provisions of the Regulations or dispense with the provisions in the Act. The Board is cognizant of the principle that Regulations, being a statutory instrument, have supremacy over the Board's guidelines and policies if they are found to be in conflict with each other. This is not a situation where the Board is failing to enforce the Regulations or is applying policies that are in contradiction to the Regulations.

Furthermore, if the Board is not satisfied with the information filed by applicants in any given case, the Board does not hesitate to require applicants to file further information. Subsection 4(2) of the Regulations does not provide for a mechanism or method by which the Board may "otherwise authorize", or dispense with, the necessity to file information set forth in the balance of subsection 4(2). The Board is of the view that the authorization can take whatever form the Board sees as appropriate in the given circumstances. In light of the policies embodied in the MBP decisions and in the circumstances of the present applications, the Board did not find it necessary to give individual authorizations.

The Board has considered all of the evidence and arguments, and has found that its previously determined policies, namely the MBP, are appropriate in considering these applications; it permits the Board to reach a finding under subsection 118(1).

As set out in Chapter 2 of these Reasons, RMEC sought a Section 21 review of the MBP during the course of the hearing. That request was denied and RMEC was advised that such an application should be addressed to the Secretary of the Board for consideration by the full Board.

Having dealt with the legal concerns raised by intervenors, the Board now turns to the question of whether the Applicants have satisfied the components of the MBP.

The first element of the MBP is the Complaints Procedure. Canadian users of natural gas must have an opportunity to buy gas on terms and conditions similar to those of the proposed exports. RMEC argued that the Complaints Procedure is flawed and unfair since only industrial buyers and large LDC's effectively have access to this process. This is not the case. Gas users of any type or class can buy their gas directly and many have availed themselves of that opportunity either by acting on their own behalf or through marketers, gas brokers or aggregators. Any Canadian user who feels aggrieved can register a complaint by submitting a letter to the Board setting out the basis for any complaint. At this hearing no complaints were registered. Renaissance argued that since no complaints were received the Board has satisfied its statutory obligation under Section 118 of the Act. The Board rejects that argument as this is but one of the various components of the MBP.

The Board finds that, since no complaints were received, the Applicants in this hearing have satisfied the first requirement of the MBP.

The next component is the EIA, wherein the Board must determine whether the proposed export is likely to cause Canadians difficulty in meeting their energy requirements at fair market prices. To do this the Board hears evidence and arguments presented at the hearing as well as considering the EIAs periodically published by this Board. Applicants have a choice of relying on the EIA published by the Board or submitting their own assessments. The Applicants chose to rely upon an EIA prepared by the Board rather than presenting their own.

It was also argued that the fact that the Board (rather than the Applicants or outside parties) had prepared the EIAs and supply and demand reports was a serious flaw in the process. As noted earlier, part of the Board's statutory mandate includes the review of the supply and disposition of natural gas in and outside Canada, and in this regard the Board regularly publishes reports on this topic. Moreover, the Board notes that intervenors had the opportunity to contradict the Board's reports by calling witnesses, or if they so chose, to submit their own evidence. Some such evidence was submitted and considered by the Board, however, that evidence was not convincing enough to persuade the Board.

In this hearing the Board had before it the EIA it published in 1989, the draft 1992 EIA, and the EIA contained in the draft of Chapter 6 of the 1994 Supply and Demand report. Each of these reports indicated that Canadians would not likely experience difficulty in meeting their energy requirements at fair market prices.

Further, the Board notes that its EIAs are produced within a consultative process in which all interested parties can participate. Recently, this process has involved a public workshop, on the draft 1992 EIA, as well as public consultations associated with the preparation of the 1991 and 1994 supply and demand reports.

The Board is of the view that approval of the applied-for licences, which together amount to some 12 $10^9 m^3$ (0.4 Tcf) of gas, would not cause Canadians difficulty in meeting their energy requirements at fair market prices.

With respect to the Other Public Interest Considerations, the evidence of each Applicant is presented in the individual application chapters of these Reasons. The findings of the Board in respect of these considerations, and any other factors the Board has considered to be relevant, are contained in the "Views of the Board" section at the end of each chapter.

The hearing process components of the MBP, including the complaints procedure, EIA, and other public interest considerations combined with the Board's ongoing monitoring of activities of the industry through its NGMAs and supply and demand reports all contribute to the Board's overall understanding of whether or not gas can be viewed as surplus to the foreseeable requirements of Canadians.

The evidence presented by some intervenors, which pertained only to certain technical aspects of natural gas supply and not to trends in total energy demand and the implications of these trends for future market adjustment and prices, was insufficient to persuade the Board that the proposed exports are not surplus to the reasonably foreseeable needs of Canadians.

For these reasons, the Board is satisfied that the quantity of gas proposed to be exported does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada having regard to the trends in the discovery of gas in Canada.

Chapter 5

Other Matters

5.1 Sunset Clauses

It has generally been Board practice in issuing a gas export licence to set an initial period of time during which, if the export of gas commences, then the licence becomes effective for the full period approved by the Board. This condition in the licence is referred to as a sunset clause because the licence would expire if exports had not commenced within a specified timeframe. Inclusion of the sunset clause is intended to limit outstanding licences to those for which the gas actually starts to flow within a reasonable period after the decision. The Board questioned each applicant concerning the acceptability of a sunset clause in the applied-for licence and in each case the applicant indicated that the inclusion of a sunset clause would be acceptable.

As a matter of general policy, and after questioning each applicant, the Board has set the timeframe by which exports must commence at approximately two years from the expected commencement of the licence term.

5.2 Intervenor Assistance

Some intervenors made suggestions for changes to the Board's processes to better assist parties unable to retain counsel. These suggestions included the creation of special categories for intervenors and witnesses, the training of special staff to assist members of the public and the provision of legal advice. AWA suggested that a system of intervenor funding be established that would allow volunteer public interest groups to better organize their cases, be heard through legal counsel and to bring forward credible witnesses.

The Board has no statutory or inherent ability to provide intervenor costs in a hearing of this type. This fact has been confirmed by the Courts in the case of *Reference re National Energy Board Act*[1]. As the intervenors were, for the most part, unrepresented, the Board permitted great latitude to those parties in matters such as the timely filing of written evidence and other submissions, the filing of sufficient copies of evidence, the *viva voce* testimony of witnesses and cross-examination. Furthermore, as noted by the Board, a considerable volume of evidence was admitted which had little or no bearing on the proceeding.

On several occasions, the Board undertook the mailing of intervenor information requests and other submissions in order to facilitate the process. The Board also provided assistance to all parties by ensuring that photocopying equipment and the Board's print shop services were available throughout the hearing to enable parties to make copies of exhibits they wished to enter.

[1](1986) 29 D.L.R. (4th) 35 (FCA).

Prior to the commencement of the hearing, Board counsel convened an information session to provide a process overview and related written materials to interested intervenors. Moreover, Board counsel was available through the course of the hearing to answer the process related questions of intervenors.

As a quasi-judicial independent tribunal the Board must observe certain formal rules of conduct and evidence. The Board has made every effort to accommodate the concerns of intervenors, many of whom were appearing before the Board for the first time. The Board notes that, should intervenors appear at a subsequent gas export hearing, it is expected that they will be more familiar with the Board's processes with the result that it is likely that less latitude in relation to the admission of evidence and other procedural matters will be necessary.

Chapter 6

CanStates Gas Marketing

6.1 Application Summary

By application dated 8 April 1994, CanStates applied for two natural gas export licences, pursuant to Part VI of the Act, with the following terms and conditions:

Pool Licence

Term	- for 15 years following commencement of deliveries under the licence
Point of Export	- Kingsgate, British Columbia
Maximum Daily Quantity	- 841.5 10^3m^3 (29.7 MMcf)
Maximum Annual Quantity	- 307.1 10^6m^3 (10.8 Bcf)
Maximum Term Quantity	- 4 606.9 10^6m^3 (162.6 Bcf)
Tolerances	- ten percent per day and two percent per year

Home Licence

Term	- for 15 years following commencement of deliveries under the licence
Point of Export	- Kingsgate, British Columbia
Maximum Daily Quantity	- 420.7 10^3m^3 (14.9 MMcf)
Maximum Annual Quantity	- 153.5 10^6m^3 (5.4 Bcf)
Maximum Term Quantity	- 2 303.2 10^6m^3 (81.3 Bcf)
Tolerances	- ten percent per day and two percent per year

CanStates would provide the gas for the Pool Licence from reserves in Alberta and Saskatchewan that it has contracted from a number of producers. The Home Licence would be underpinned by Home's corporate supply pool in Alberta.

The gas would be transported on the NOVA and ANG systems to the international border at Kingsgate, British Columbia. Pacific Gas Transmission Company ("PGT") would then transport the gas to the Cascade Natural Gas Corporation ("Cascade") system for delivery to the Hermiston gas-fired generating plant at Hermiston, Oregon.

6.2 Gas Supply

6.2.1 Supply Contracts

CanStates has aggregated two supply pools to support its application for two export licences. The first supply pool, consisting of two groups of producers, referred to by CanStates as Schedule A and B, will be used to support the Pool Licence. The second supply pool will consist solely of Home.

CanStates has executed 15-year gas purchase contracts with five producers: Anderson, Atcor, Dekalb, Dorset, and Elan (collectively the "Schedule A producers"). Anderson and Dekalb are using their Alberta corporate reserve pools to supply CanStates. While Atcor, Dorset and Elan have contractually dedicated specific Alberta lands in their contracts, CanStates submitted that the gas could come from any of the producers' supplies under the terms of the gas purchase contracts it has executed with its producers. The dedicated reserves were merely a form of security which could be relied upon by CanStates to ensure adequate supply. All five producers have also provided corporate warranties in support of their sales to CanStates.

CanStates is also using excess gas from five producers which had previously dedicated reserves to CanStates for sale to TEMCO and A&S. That excess gas is now available to CanStates as a consequence of the termination of the A&S sale in October 1993. The six producers are: Altana, Dorset, NuGas, Phillips, Rife and Tarragon (collectively the "Schedule B producers"). That previously dedicated supply is augmented by additional Alberta and Saskatchewan reserves from Dorset, NuGas and Tarragon. All of the Schedule B producers have provided corporate warranties in support of their requirements to CanStates. In addition, CanStates can request both the Schedule B producers and the other TEMCO producers to deliver up to 125 percent of their daily contract volumes to mitigate any possible gas supply shortfalls.

The second supply pool will be underpinned by Home's Alberta corporate supply pool pursuant to a 15-year gas purchase contract with CanStates. Home has also provided a corporate warranty in support of its obligation to CanStates.

6.2.2 Reserves

Table 6-1 shows the Board's estimates of gas reserves for the producer groups supporting the Pool Licence. For the Schedule A producers, the Board's overall estimate of reserves is slightly lower than CanStates' estimate and is approximately the same as the requirements for those producers. After accounting for estimated production to the project start-up of 1 July 1996, the Board's estimate of remaining reserves will be nine percent less than requirements.

Atcor provided a corporate supply/demand balance indicating that some excess gas would be available to backstop its submitted supply. Dorset submitted estimates of reserves for additional lands; however,

since the well data are currently confidential the Board was unable to calculate estimates of reserves, or potential resources, for those lands although it recognizes the possibility of potential supply in those areas. Dorset also provided estimates of reserves for two producing properties which will become available when the gas purchase contracts expire in November 1996 and November 1998.

For the Schedule B producers, after deducting estimated production to project start-up and the TEMCO requirements until 2005, the Board's estimate of reserves is 20 percent lower than CanStates' and is about the same as the Schedule B producer requirements. In total, the Board's estimate of supply for the Schedule A & B producers is 10 percent lower than CanStates' estimate at project start-up and is seven percent lower than CanStates' requirements.

Table 6-1
Comparison of Estimates of CanStates' Established Gas Reserves with the Applied-for Term Volume (Pool Licence)

10^6m^3
(Bcf)

	CanStates		NEB		Applied-for Volume
	1993[1]	1996[2]	1992[3]	1996[2]	
Schedule A	3 963 (139.9)	3 652 (128.9)	3 854 (136.0)	3 422 (120.8)	3 763 (132.8)
Schedule B	1 550[4] (54.7)	1 099[4] (38.8)	1 592[4] (56.2)	873[4] (30.8)	844 (29.8)
Total Pool Licence Supply	5 513 (194.6)	4 751 (167.7)	5 446 (192.2)	4 295 (151.6)	4 607 (162.6)

1. As of 31 December 1993.
2. As of 1 July 1996, project start-up date.
3. As of 31 December 1992.
4. These estimates of remaining reserves exclude the requirements of TEMCO to 2005.

Table 6-2 shows the Board's and CanStates' estimates of remaining gas reserves for the Home Licence. The table shows that the Board's and CanStates' estimates of reserves are nearly five times the applied-for volume, but are only 29 percent higher than total requirements for that supply. Home adopted ERCB estimates of reserves for its Alberta corporate supply pool. After accounting for estimated production to 1 July 1996, CanStates' and the Board's estimates of reserves at project start-up exceed Home's total demand by 40 and seven percent respectively. In order to mitigate any possible gas supply shortfalls, Home indicated that it could: explore for and develop new pools, acquire new reserves, apply improved recovery technology to existing pools, purchase third party gas, enter into new gas purchase arrangements, or a combination of any of these options.

Table 6-2
Comparison of Estimates of CanStates' Established Gas Reserves with the Applied-for Term Volume (Home Licence)

10^6m^3
(Bcf)

CanStates (Home)		NEB		Applied-for Volume
1993	1996	1992	1996	
12 249[1] (432.6)	9 462[2] (334.1)	10 864[3] (383.7)	7 245[2] (255.8)	2 303[4] (81.3)

1. As of 31 December 1993.
2. As of 1 July 1996, project start-up date.
3. As of 31 December 1992.
4. This represents 28 percent of Home's total existing requirements of 8 403 10^6m^3 (296.7 Bcf), including the applied-for volume. At project start-up, total requirements are estimated to be only 6 781 10^6m^3 (239.5 Bcf).

Figure 6-1
Comparision of CanStates' and NEB's Estimates of Annual Productive Capacity for the Pool Licence

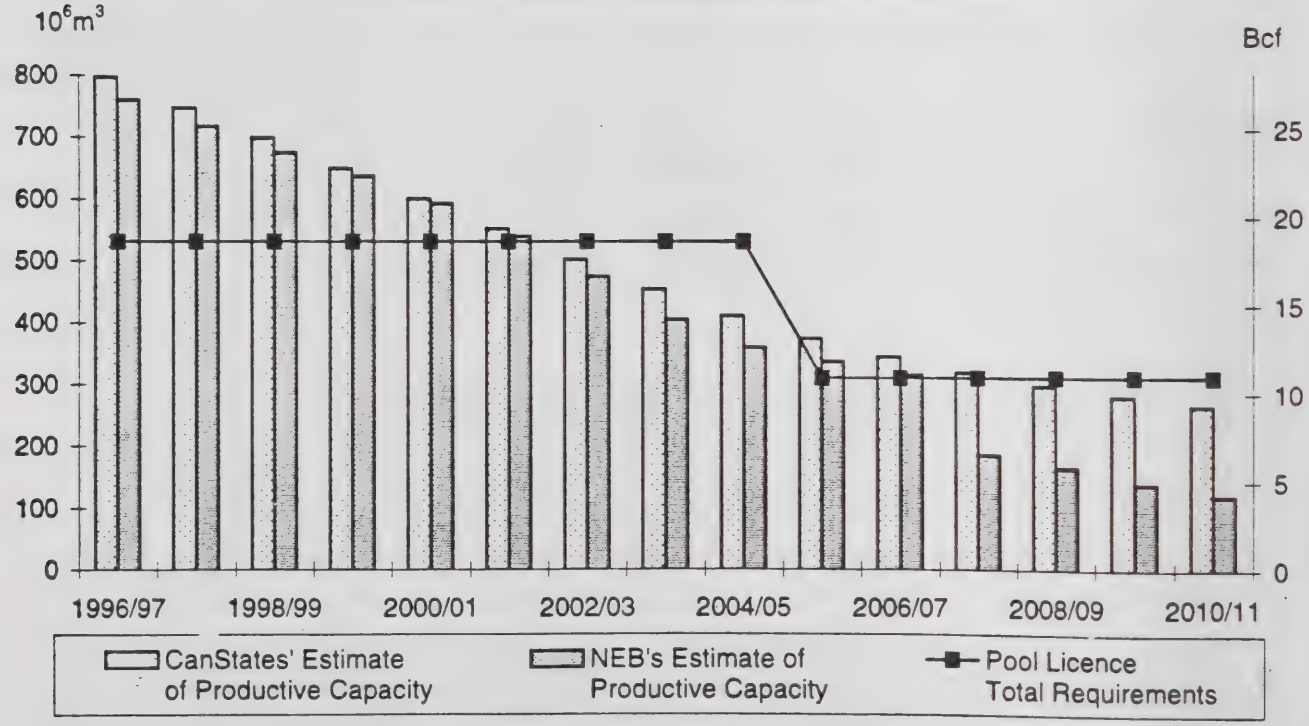
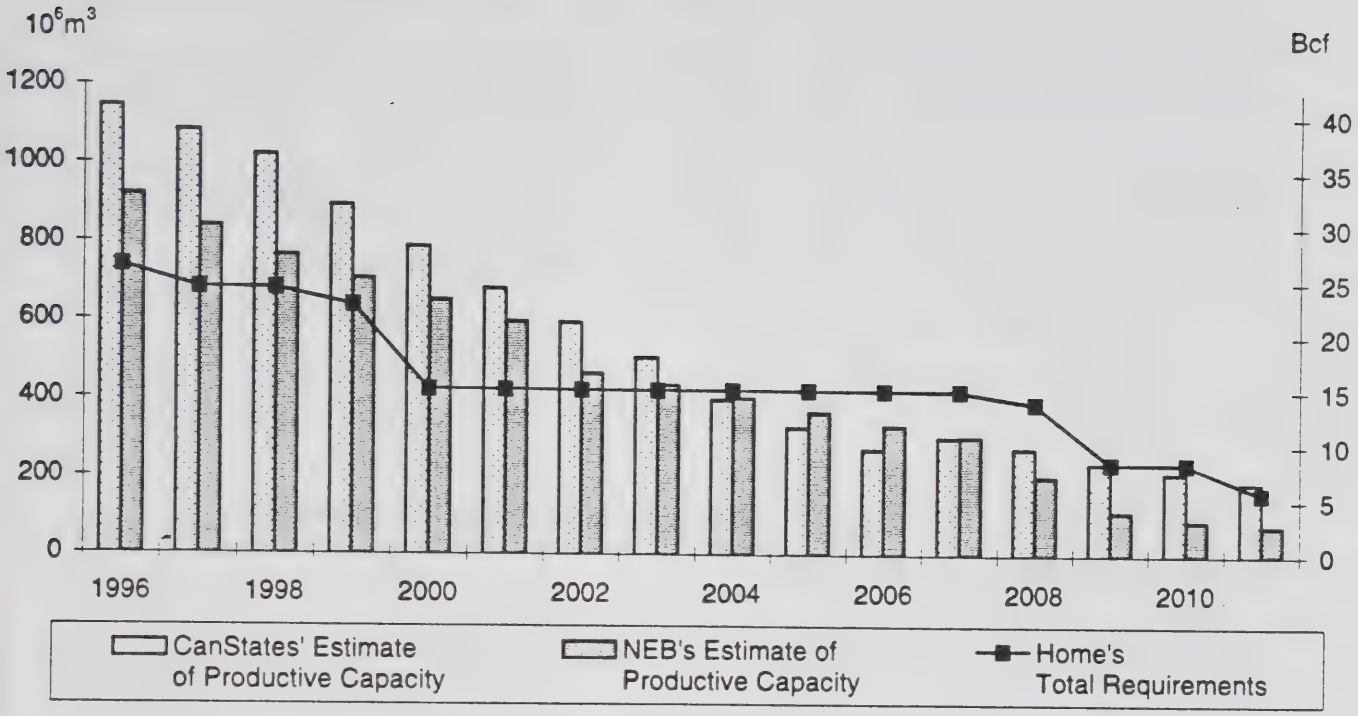


Figure 6-2
Comparision of CanStates' and NEB's Estimates
of Annual Production Capacity for the Home Licence



6.2.3 Productive Capacity

A comparison of the Board's and CanStates' projections of productive capacity for the Pool Licence with the annual requirements is shown in Figure 6-1. The Board's analysis indicates that the Schedule A and B producers have sufficient productive capacity to satisfy the annual requirements for eight years of the proposed 15-year term. CanStates' analysis indicates that these producers have sufficient productive capacity to satisfy nine years of the proposed 15-year term. Both the Board's and CanStates' analyses are based on the submitted reserves only and do not reflect backstopping provisions.

The estimate of productive capacity for the Pool Licence is a composite of the Board's estimates of productive capacity for each of the Schedule A and Schedule B producers. The Board's estimate of productive capacity for the Schedule A producers indicates that requirements can be satisfied for eight years of the proposed 15-year term. The Board's estimate of adjusted productive capacity for the Schedule B producers indicates that requirements can be met for 10 years of the proposed 15-year term.

Figure 6-2 compares the Board's and CanStates' projections of productive capacity for the Home Licence with Home's requirements. Both the Board's and CanStates' projections indicate adequate productive capacity to satisfy requirements for eight years of the proposed 15-year term.

6.3 Transportation

CanStates will utilize its producers' existing Firm Service ("FS") capacity on the NOVA system to transport the proposed export volumes to Coleman, Alberta. The gas would then flow on the ANG system to Kingsgate, B.C. pursuant to a FS contract between Hermiston and ANG (which would be assigned to CanStates). Hermiston would take delivery at the export point near Kingsgate and transport the gas on the PGT system pursuant to a FS agreement.

On 28 March 1994, Hermiston executed a facility and service agreement with Cascade for the construction of a pipeline lateral between the PGT system and the cogeneration plant. Cascade will undertake the construction of the lateral for service no later than 31 October 1996.

No new Canadian facilities are required for the export.

6.4 Market

The gas to be exported will be used by Hermiston for its proposed combined-cycled, gas-fired 474 MW generating plant near Hermiston, Oregon. CanStates expects that exports would occur at load factors ranging from 80 to 95 percent.

The cogeneration plant will be developed by U.S. Generating Company and will be located in proximity to the Lamb-Weston, Inc. food processing plant. The proposed exports will supply over 50 percent of the cogeneration plant's daily gas requirement. Electricity produced by the cogeneration plant is to be sold to PacifiCorp., a power generating (and wholesale) electric utility pursuant to a 20-year power sales agreement executed by Hermiston and PacifiCorp on 7 October 1993. The food processing plant will purchase the steam production.

The expected in-service date for the cogeneration plant is 1 July 1996.

6.5 Gas Sales Contracts

The proposed Pool Licence is underpinned by a gas sales contract, as amended, between CanStates and Hermiston which was executed on 14 September 1993. A gas sales contract executed by Home and Hermiston on 7 April 1994 underpins the proposed Home Licence. The primary term of each contract will continue for 15 years after the date of first deliveries; the contracts are renewable unless terminated by the parties after providing a one-year notice. The contracts can be terminated, after a 90-day notice, if either party fails to obtain all regulatory authorizations and project financing by 1 October 1994 and 15 October 1994 respectively. CanStates stated that the contracts were negotiated at arm's-length.

The contracts provide for a Daily Contract Quantity ("DCQ") of 841.5 10^3m^3 and 420.7 10^3m^3, for the CanStates and Home contracts respectively. Hermiston must purchase a Minimum Annual Volume ("MAV") equal to 80 percent of the respective DCQs during each contract year for both contracts. Hermiston can make up any deficient volume during the following contract year. For any remaining deficient volume below the MAV, Hermiston must pay a Gas Reservation Charge ("GRC") of $U.S. 0.40/MMBtu. The rate will escalate by 5.5 percent annually. However, Hermiston can also purchase gas for resale to PacifiCorp if the total resale volume does not exceed 50 percent of the DCQs.

Additionally, Hermiston may be allowed to purchase gas for resale to other third parties if CanStates receives the incremental profit.

If CanStates fails to deliver the volumes nominated by Hermiston, it shall be required to indemnify Hermiston for any incremental costs of obtaining alternate gas supplies.

For both contracts, the contract price consists of a monthly demand charge, a commodity charge and the GRC. The monthly demand charge consists of monthly demand and commodity tolls on the ANG and NOVA systems. The monthly commodity charge is equal to a 1993 base gas price of $U.S. 1.64/MMBtu for the CanStates contract and $U.S. 1.61/MMBtu for the Home contract, escalated annually by 5.5 percent.

The CanStates contract does not provide for re-negotiation and binding arbitration. The Home contract provides for binding arbitration.

The Alberta border price that would have been in effect on 1 January 1994 under the terms of the contracts was approximately $Cdn. 2.25/GJ ($Cdn. 2.37/MMBtu).

6.6 Status of Regulatory Authorizations

CanStates' producers have received several of the required energy removal permits from the ERCB. The remaining permits have been applied for and decisions are pending. As well, Hermiston has obtained import authorization from the DOE/FE. Various other U.S. federal, state and local regulatory approvals have either been obtained or applied for.

Views of the Board

The Board notes that Hermiston must nominate at least 80 percent of the DCQs in accordance with the minimum purchase obligation in each gas sales contract. The Board also notes that there is a gas reservation charge on any deficient volumes. The Board also recognizes that the market for the gas is likely to be long-term and stable. The Board is therefore satisfied that there is a reasonable expectation that the volumes sought to be licensed will be taken.

The Board notes that the fixed price with a built-in escalator reflects the parties' assessment of the future gas price for gas fired generation. As well, the Board notes from the evidence that it is unlikely that any circumstances would occur that would cause CanStates, Home or Hermiston to terminate their contractual arrangements. The Board is thus satisfied that the gas sales contracts will remain attractive to the parties over their proposed terms, and are therefore durable.

The Board has reviewed the gas sales contracts and notes that they have been negotiated at arm's length.

As well, producer support was demonstrated by the execution of the gas supply contracts between CanStates and its producers.

The Board notes that the contract price contains a non-negotiable demand charge component equal to CanStates' demand charge obligations on all Canadian upstream pipelines. Therefore, the Board is satisfied that there are provisions in the gas sales contracts for the payment of the associated transportation charges on Canadian pipelines over the terms of the gas sales contracts.

The Board's estimate of reserves for CanStates' Pool Licence currently exceeds its requirements; however, at project start-up in mid-1996, reserves would be slightly less than requirements. The Board's projection of productive capacity shows that CanStates can satisfy its total requirements throughout the majority of the term of the proposed export. The Board is satisfied that CanStates can mitigate any apparent shortfalls since each of its producers has provided a corporate warranty to supply its requirements and CanStates has the option to request additional gas from the TEMCO producers. For these reasons, the Board is satisfied with the overall adequacy of CanStates' gas supply.

The Board's estimate of reserves for the Home Licence exceeds Home's total requirements at project start-up. The Board's projection of productive capacity shows that Home can satisfy its total requirements for the majority of the term of the proposed export. The Board notes that Home has also provided CanStates with a corporate warranty in respect of its Hermiston commitments and has provided several options available to mitigate possible shortfalls. For these reasons, the Board is satisfied with the adequacy of CanStates' gas supply.

As well, the Board notes that the CanStates producers either have received or have applied for energy removal permits from the ERCB. All other regulatory authorizations are in place. The Board also recognizes that transportation on all required pipelines has been arranged. The terms of these authorizations, transportation arrangements and of the gas and power sales contracts are consistent with or exceed the proposed terms of the licences. The Board is therefore satisfied that the requested licence terms are appropriate.

Decision

The Board has decided to issue two gas export licences to CanStates, subject to the approval of the Governor in Council. Appendix I contains the terms and conditions of the licences to be issued.

Chapter 7

Chevron Canada Resources Limited

7.1 Application Summary

By application dated 7 April 1994, Chevron applied for a natural gas export licence, pursuant to Part VI of the Act, with following terms and conditions:

Term	- for 15 years following the later of 1 July 1996 or the date of first deliveries
Point of Export	- Kingsgate, British Columbia
Maximum Daily Quantity	- 585.8 10^3m^3 (20.7 MMcf)
Maximum Annual Quantity	- 214.4 10^6m^3 (7.6 Bcf)
Maximum Term Quantity	- 3 210.0 10^6m^3 (113.3 Bcf)
Tolerances	- ten percent per day and two percent per year

Chevron will provide the gas proposed for export from its corporate supply pool in Alberta. The gas would be transported on the NOVA and ANG systems to the international border at Kingsgate, British Columbia. PGT would then transport the gas to the Cascade system for delivery to the Hermiston gas-fired generating plant at Hermiston, Oregon.

7.2 Gas Supply

7.2.1 Supply Contracts

Gas supply contracts were not required since Chevron will provide the gas from its corporate supply pool in Alberta. The Board notes that no specific pools have been contractually dedicated to the proposed export.

7.2.2 Reserves

Table 7-1 shows that the Board's estimate of Chevron's gas reserves for its Alberta corporate supply pool is approximately equal to Chevron's; however, the Board's estimate after adjusting for 1993 production of 1 289 10^6m^3 (45.5 Bcf), is nine percent lower than Chevron's estimate. The table also shows that the Board's estimate of Chevron's gas reserves is approximately four times the applied-for volume and approximately twice Chevron's estimated total requirements, including the proposed export. The estimates of reserves provided by Chevron for its pools are those recognized by the ERCB.

Table 7-1
Comparison of Estimates of Chevron's Established Gas Reserves with the Applied-for Term Volume

	10^6m^3 (Bcf)	
Chevron[1]	**NEB[2]**	**Applied-for[3] Volume**
13 588 (480)	13 832 (488)	3 210 (113.4)

1. As of 31 December 1993. Chevron's estimate of remaining reserves would be approximately 5 647 10^6m^3 (149 Bcf) less than shown if adjusted for estimated production to 1 July 1996.
2. As of 31 December 1992. The Board's estimate of remaining reserves would be 5 728 10^6m^3 (202 Bcf) less than shown if adjusted for estimated production to 1 July 1996.
3. This represents about 45 percent of Chevron's total requirements of 6 230 10^6m^3 (220 Bcf), including the applied-for volume, for its Alberta corporate supply.

Chevron's Alberta corporate supply pool includes 120 pools throughout Alberta with the Kaybob South Beaverhill Lake A pool supplying 34 percent of the reserves. Another 30 percent of the reserves are either associated or solution gas reserves in oil pools which include gas cycling schemes. The production of these reserves is subject to the development plans for the oil pools. Due to the complexity of these schemes, the Board relied primarily on Chevron's analysis of start-up of blowdown but used the Board's independent analysis of gas reserves. The remainder of the pools were non-associated gas pools many of which were not on production in 1993.

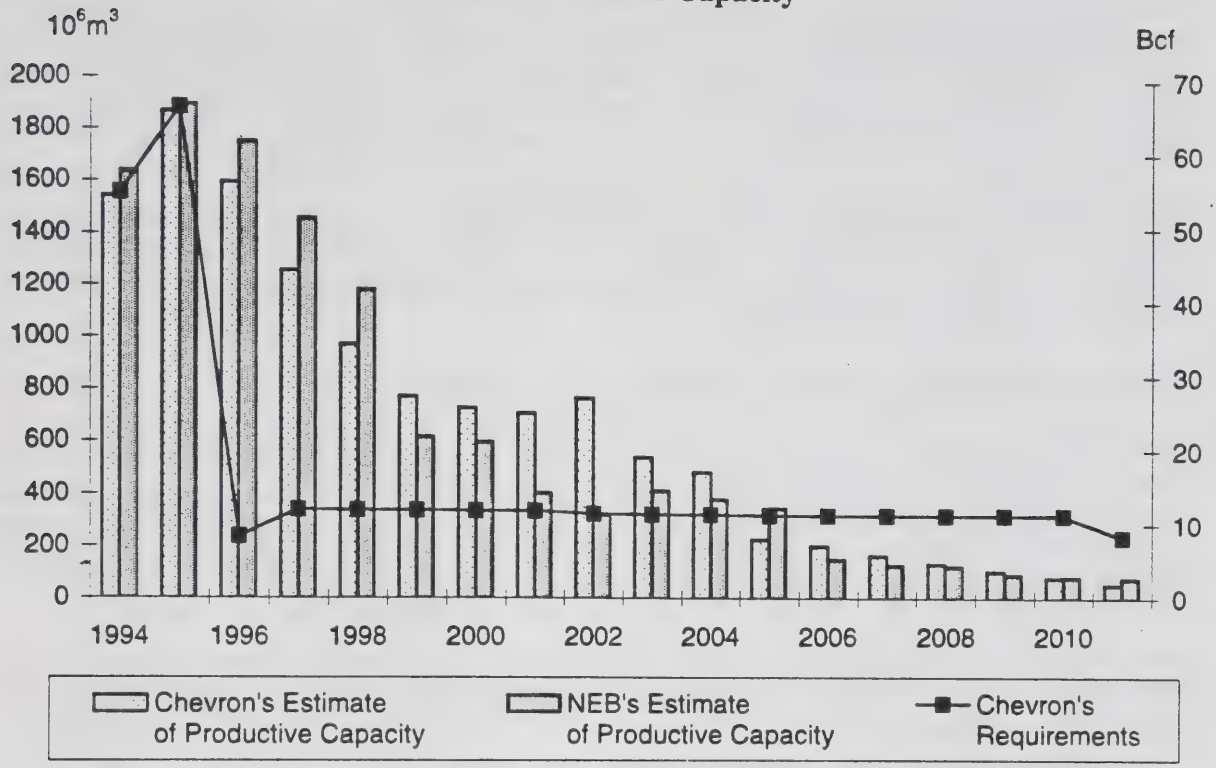
Chevron stated that it intends to add reserves to its gas supply pool as a result of future exploratory and development drilling, and acquisitions.

7.2.3 Productive Capacity

Figure 7-1 compares the Board's and Chevron's projections of productive capacity with Chevron's total requirements. Both projections show that Chevron has adequate gas supply from its Alberta corporate supply pool to meet its total requirements for the majority of the proposed export term.

Chevron has stated that it would decontract short-term gas sales if needed to meet its long-term contract demands as well as maintain deliverability through drilling and acquisitions.

Figure 7-1
Comparision of Chevron's and NEB's
Estimates of Annual Capacity



7.3 Transportation

Chevron will utilize its existing FS capacity on the NOVA system to transport the proposed export volumes to Coleman, Alberta. The gas would then be shipped on the ANG system to the export point near Kingsgate, B.C. Chevron U.S.A. Inc. ("CUSA") would transport the gas on the PGT system to the interconnect of the proposed Cascade lateral to the cogeneration plant. Cascade will undertake the construction of the lateral for service no later than 31 October 1996.

No new Canadian facilities are required for the export.

7.4 Market

The market is discussed in section 6.4 of these Reasons.

7.5 Gas Sales Contract

CUSA and Hermiston executed a gas sales contract on 28 February 1994. The contract will continue for 15 years from the commencement of gas deliveries; the contract is renewable unless terminated by the parties after providing a one-year notice. The contract provides for a DCQ of 585.8 10^3m^3 and can be terminated, after a 90-day notice, if either party fails to obtain all regulatory authorizations and project financing by 1 October 1994 and 15 October 1994 respectively.

CUSA will obtain its gas supply from Chevron Natural Gas Services, Inc. ("CNGS") and Chevron pursuant to a Gas Sale and Purchase Agreement dated 28 February 1994 between the three parties. This non-arms length, export/resale contract is intended as a flow through arrangement for the resale contract between CUSA and Hermiston.

Chevron stated that the contract with Hermiston was negotiated at arm's length.

Pursuant to the gas sales contract with CUSA, Hermiston must purchase a MAV equal to 80 percent of the DCQ for each contract year. Hermiston can make up the deficient volume during each contract year. For quantities not taken below 80 percent of the MAV, Hermiston must pay a deficiency charge equal to $U.S. 0.40/MMBtu effective 1 November 1993 and escalated 5.5 percent annually. The deficiency charge shall be calculated beginning on 1 July 1996.

Hermiston can also purchase gas for resale to PacifiCorp if the total resale volumes do not exceed the DCQ. Hermiston may also be allowed to purchase gas for resale to other third parties if Chevron receives the incremental profit.

The contract price consists of a monthly transportation demand/commodity charge and a commodity charge. The monthly transportation charge consists of monthly demand and commodity tolls on PGT, ANG and NOVA. The monthly commodity charge is equal to the product of the volume of gas delivered and the wellhead price. The wellhead price was set at $U.S. 1.6142/MMBtu, as of 1 November 1994, and will escalate at 5.5 percent annually.

The gas sales contract between CUSA and Hermiston provides for binding arbitration.

The Alberta border price on 1 January 1994 would have been approximately $Cdn. 2.25/GJ ($Cdn. 2.37/MMBtu) under the terms of the various contracts.

7.6 Status of Regulatory Authorizations

DOE/FE has authorized the import of the applied-for export volumes. As well, Chevron has obtained a removal permit from the ERCB.

Views of the Board

The Board notes that Hermiston must nominate at least 80 percent in accordance with the minimum purchase obligation in the gas sales contract. The Board also notes that there is a penalty on any deficient volumes. The Board also recognizes that the market for the gas is likely to be long-term and stable. The Board is therefore

satisfied that there is a reasonable expectation that the volumes sought to be licensed will be taken.

The Board notes that the fixed price and built-in escalator reflects the parties' assessment of the future gas price for gas fired generation. As well, the Board notes Chevron's evidence that it is unlikely that any circumstances would occur that would cause CUSA and the buyer to terminate the gas resale contract. The Board is thus satisfied that the gas resale contract will remain attractive to the parties over its proposed term, and is therefore durable.

The Board has reviewed the gas resale contract and notes that it has been negotiated at arm's length.

Since Chevron owns the gas supply supporting this export licence application, a finding of producer support is not necessary.

The Board notes that the contract price contains a demand charge component equal to Chevron and CUSA's demand charge obligations on all upstream pipelines. Therefore, the Board is satisfied that there are provisions in the gas resale contract for the payment of the associated transportation charges on Canadian pipelines over the term of the contract.

The Board's estimate of reserves for Chevron's Alberta corporate supply pool exceeds Chevron's total requirements. Additionally, the Board's projection of productive capacity shows that Chevron can satisfy its total requirements throughout the majority of the term of the proposed export.

As well, the Board notes that all relevant regulatory authorizations are in place. The Board also recognizes that transportation on all required pipelines has been arranged. The terms of these authorizations, transportation arrangements and of the gas and power sales contract are consistent with or exceed the proposed term of the licence. The Board is therefore satisfied that the requested licence term is appropriate.

Decision

The Board has decided to issue a gas export licence to Chevron, subject to the approval of the Governor in Council. Appendix I contains the terms and conditions of the licence to be issued.

Chapter 8

Renaissance Energy Ltd.

8.1 Application Summary

By application dated 25 March 1994, Renaissance sought, pursuant to Part VI of the Act, a licence for the export of natural gas with the following terms and conditions:

Term	- commencing on the date of issuance of the licence and ending on 31 October 2003
Point of Export	- Monchy, Saskatchewan
Maximum Daily Quantity	- 140.0 10^3m^3 (4.9 MMcf)
Maximum Annual Quantity	- 51.1 10^6m^3 (1.8 Bcf)
Maximum Term Quantity	- 511.0 10^6m^3 (18.0 Bcf)
Tolerances	- ten percent per day and two percent per year

The gas proposed to be exported would be produced from pools within Alberta and transported on the NOVA system to the Alberta border at McNeill. Foothills would then deliver the gas to the export point at Monchy, Saskatchewan. From the international border, the gas would be shipped on the Northern Border Pipeline Co. ("Northern Border") system for delivery to AmGas at Ventura, Iowa.

8.2 Gas Supply

8.2.1 Supply Contracts

Gas supply contracts were not required as Renaissance will provide the gas from its corporate supply pool. No specific pools have been contractually dedicated to the proposed export.

8.2.2 Reserves

In support of its application, Renaissance provided estimates of gas reserves for 30 of its pools which, Renaissance submitted, would be adequate to provide the reserves and productive capacity needed for the proposed export to AmGas.

Table 8-1 shows that the Board's estimate of Renaissance's submitted gas reserves is four percent higher than Renaissance's estimate and is 34 percent higher than the applied-for volume. After adjusting for production to the effective commencement date of the applied-for licence, the Board's

estimate of Renaissance's gas reserves would still be greater than the applied-for volume. The estimates of reserves provided by Renaissance for these gas pools are those recognized by the ERCB.

Renaissance indicated that it intends to supply the proposed export from its corporate supply pool, of which the reserves identified in the application form a small part. Renaissance submitted limited information concerning its total corporate pool which it indicated consisted of 29 780 10^6m^3 (1,051 Bcf) of reserves, as of 31 December 1993. Renaissance's corporate supply pool supports its existing long-term requirements over ten years of 16 761 10^6m^3 (592 Bcf), including the proposed exports. In the event of a possible supply shortfall, Renaissance stated that priority would be given to long-term sales contracts, including sales to AmGas, over short-term sales contracts.

Table 8-1
Comparison of Estimates of Renaissance's Established Gas Reserves with the Applied-for Term Volume

	10^6m^3 (Bcf)	
Renaissance[1]	**NEB[2]**	**Applied-for[3] Volume**
602 (21.3)	627 (22.1)	460 (16.2)

1. As of 31 October 1993.
2. As of 31 December 1992. The Board's estimate of remaining reserves would be approximately 80 10^6m^3 (2.8 Bcf) less than shown if adjusted for production to 1 November 1994. The Board's estimate of reserves would then be ten percent lower than Renaissance's, but 19 percent greater than the applied-for volume.
3. This represents the applied-for volume, having been reduced by deliveries to AmGas which commenced on 1 November 1993 and continue under short-term authorization up to the effective date of the applied-for licence (1 November 1994).

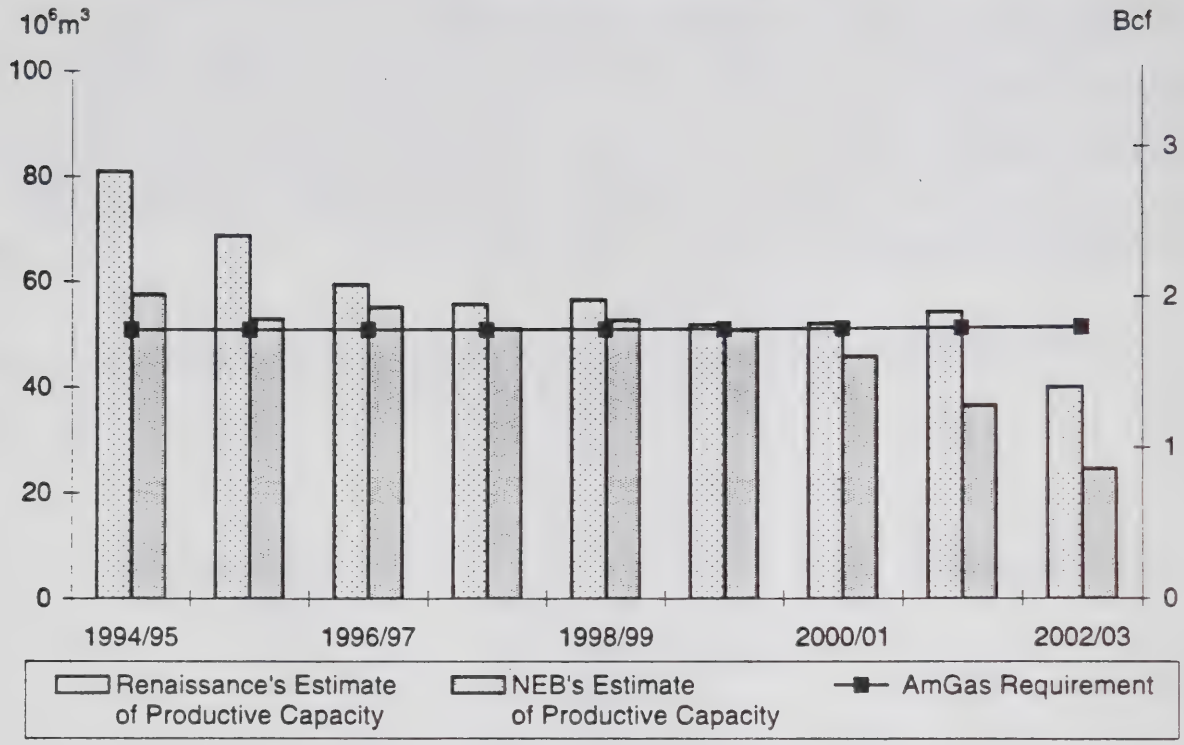
8.2.3 Productive Capacity

Figure 8-1 compares the Board's and Renaissance's projections of productive capacity with the AmGas requirement. Both projections show that Renaissance has adequate gas supply from the submitted reserves to meet the AmGas requirement for the majority of the proposed export term.

8.3 Transportation

The gas proposed for export would be delivered to McNeill, Alberta under Renaissance's existing firm transportation arrangements with NOVA. Renaissance would transport the gas to Monchy, Saskatchewan pursuant to a firm transportation contract with Foothills. Renaissance Energy (U.S.) Inc. ("Renaissance U.S.") would take possession of the gas at the international border and transport it for sale to AmGas at Ventura, Iowa under its firm transportation arrangement with Northern Border.

Figure 8-1
Comparision of Renaissance's and NEB's
Estimates of Annual Capacity



8.4 Market

AmGas is part of the Midwest Capital Group, a wholly-owned subsidiary of Midwest Resources Inc. ("Midwest Resources"). Midwest Resources owns gas and electric utility companies in the State of Iowa. AmGas aggregates gas supply for distribution and resale to more than 1500 retail and local distribution customers. The company has annual sales in excess of 40 Bcf and is growing at an estimated rate of 20 to 30 percent per year.

The proposed export, representing about five percent of AmGas' portfolio, would be incremental to the company's current supply and be used to serve its long-term market requirements.

Renaissance stated that it expected to operate its contract with AmGas at a 100 percent load factor.

8.5 Gas Sales Contracts

Renaissance executed a gas supply contract with Renaissance U.S. dated 1 January 1993 to supply the gas at the international border. In turn, Renaissance U.S. executed a gas purchase agreement with AmGas dated 1 November 1993, the terms and conditions of which govern the export of the gas.

The term of the sales arrangement between Renaissance U.S. and AmGas is for a period of ten years commencing on 1 November 1993 and continues thereafter until terminated by either party on 30 days notice. The contract provides for a DCQ of 140 10^3m^3 (4.9 MMcf).

Under the terms of the agreement, neither party may interrupt or curtail deliveries or receipts of gas unless specifically agreed to in writing by the parties. If AmGas fails to take the full DCQ, it shall pay a penalty of $U.S. 0.50 per MMBtu on the quantities not taken. Similarly, if Renaissance U.S. fails to deliver the full DCQ, it shall pay the same penalty on the quantities not delivered.

The monthly price to be paid for the gas at Ventura, Iowa, will be an index price comprising the spot prices of gas delivered to Northern Natural Gas Co. as published in McGraw Hill's "Inside F.E.R.C.'s Gas Market Report". If this index price ceases to be published, the parties will meet to negotiate a new reference price. Either party may terminate the arrangement on 30 days notice if no agreement is concluded on a replacement index. Renaissance U.S. is responsible for paying the transportation charges on Northern Border out of the proceeds of the sale to AmGas.

Renaissance estimated that the price under the terms of the contract, on 1 January 1994 at the Alberta border, would have been approximately $Cdn. 1.89/GJ ($Cdn. 1.99/MMBtu).

8.6 Status of Regulatory Authorizations

DOE/FE has authorized the import of the applied-for export volumes. As well, Renaissance has received a gas removal permit from the ERCB.

Views of the Board

The Board notes that gas has been flowing to AmGas under short-term export authorization since 1 November 1993. The Board also notes that there is a provision in the contract for the payment of a significant penalty should AmGas take less than the full DCQ. The Board is, therefore, satisfied that there is a reasonable expectation that the volumes sought to be licensed will be taken.

The Board notes the market-oriented approach used to determine the price to be paid for the gas. The Board is thus satisfied that the gas sales contract will remain attractive to the parties over the proposed term and is, therefore, durable.

The Board has reviewed the gas sales contract between Renaissance U.S. and AmGas and is satisfied that it has been negotiated at arm's length.

Since Renaissance owns the gas supply supporting this export licence application, a finding of producer support is not necessary.

The Board is satisfied that the pricing provisions in the gas sales contract will yield sufficient revenues to cover the payment of the associated transportation charges on Canadian pipelines over the term of the gas sales arrangement.

The Board notes that the term of the gas sales contract is identical to the applied-for term of the proposed export. Transportation has been arranged on all required pipelines for the proposed export term. The Board also notes that the applied-for regulatory authorizations are for a term and volume commensurate with the requested licence. The Board is, therefore, satisfied that the term for the licence is appropriate.

The Board's estimate of reserves for Renaissance's submitted gas supply exceeds Renaissance's requirement for AmGas. Further, the Board's projection of productive capacity for Renaissance shows adequate supply for the majority of the term of the proposed export.

Finally, the Board notes that Renaissance requested that the applied-for term volume be adjusted to account for a reduced export term, reflecting the quantities sold under short-term export authorization since 1 November 1993. Assuming a commencement date of 1 November 1994, the Board has reduced the applied-for term volume by 51 10^6m^3 (1.8 Bcf). During the hearing, Renaissance agreed with the Board's method of calculating this reduction in the term volume.

Decision

The Board has decided to issue a gas export licence to Renaissance, subject to the approval of the Governor in Council. Appendix I contains the terms and conditions of the licence to be issued.

Chapter 9

Renaissance Energy Ltd.

9.1 Application Summary

By application dated 6 April 1994, Renaissance applied for two licences for the export of natural gas, pursuant to Part VI of the Act, for sale to two local distribution companies ("LDCs") in New England, with the following terms and conditions:

Bay State

Term	- commencing on 1 November 1995 and ending on 31 October 2005
Point of Export	- Niagara Falls, Ontario
Maximum Daily Quantity	- 180.0 10^3m^3 (6.4 MMcf)
Maximum Annual Quantity	- 66.0 10^6m^3 (2.3 Bcf)
Maximum Term Quantity	- 660.0 10^6m^3 (23.3 Bcf)
Tolerances	- ten percent per day and two percent per year

Northern Utilities

Term	- commencing on 1 November 1995 and ending on 31 October 2005
Point of Export	- Niagara Falls, Ontario
Maximum Daily Quantity	- 28.0 10^3m^3 (990 Mcf)
Maximum Annual Quantity	- 10.1 10^6m^3 (0.4 Bcf)
Maximum Term Quantity	- 101.0 10^6m^3 (3.6 Bcf)
Tolerances	- ten percent per day and two percent per year

The gas proposed to be exported would be produced from pools within Alberta and transported on the NOVA system to the Alberta border at Empress. TransCanada would then deliver the gas to the export point at Niagara Falls, Ontario. From the international border, the gas would be shipped on the National Fuel Gas Supply Corporation ("National Fuel") system to the interconnect with the facilities of Tennessee Gas Pipeline Co. ("Tennessee") for delivery to Bay State and Northern Utilities.

9.2 Gas Supply

9.2.1 Supply Contracts

Gas supply contracts were not required as Renaissance will provide the gas from its corporate supply pool. No specific pools have been contractually dedicated to the proposed export.

9.2.2 Reserves

In support of its application, Renaissance provided estimates of gas reserves for 67 of its pools in Alberta which, Renaissance submitted, would be adequate to provide the reserves and productive capacity needed for the proposed exports to Bay State and Northern Utilities.

Table 9-1 shows that the Board's estimate of Renaissance's submitted gas reserves is about six percent higher than Renaissance's and is 44 percent higher than the applied-for volumes. After adjusting for production to the project start-up date, the Board's estimate of Renaissance's gas reserves would still be greater than the applied-for volume. The estimates of reserves provided by Renaissance for these gas pools are those recognized by the ERCB.

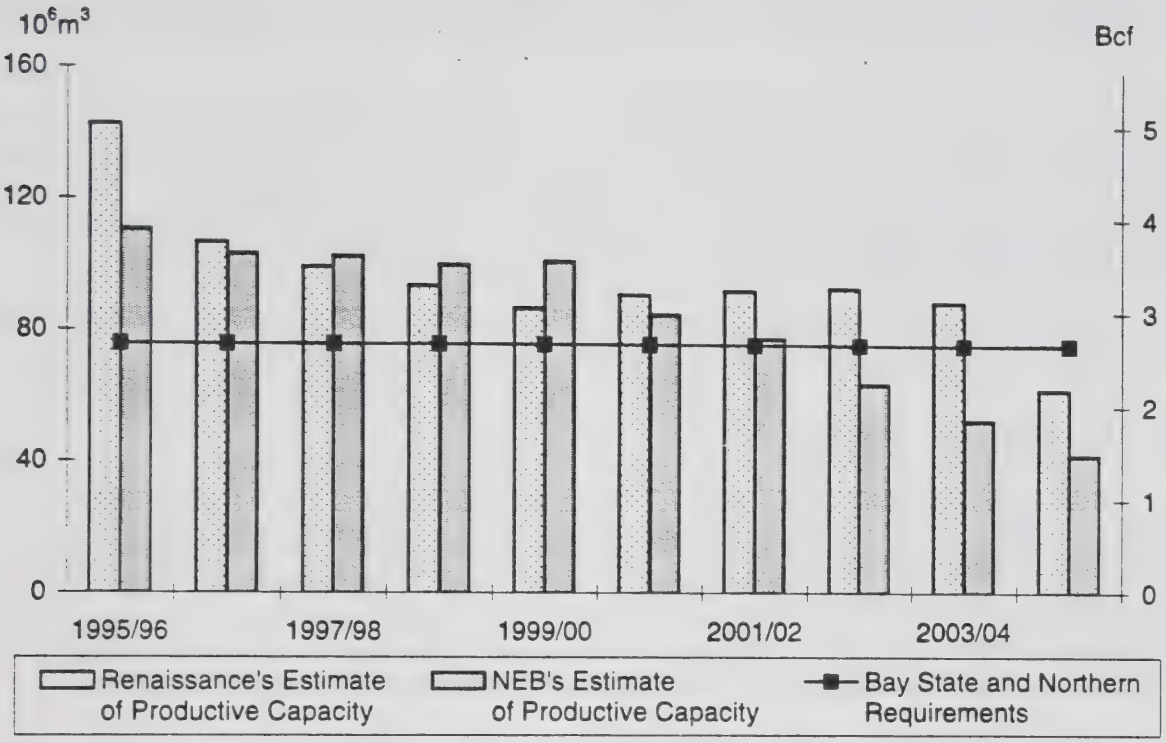
Renaissance indicated that it intends to supply the proposed exports from its corporate supply pool, of which the reserves identified in the application form a small part. As noted in Chapter 8 of these Reasons, Renaissance submitted limited information concerning its corporate pool which supports its existing long-term requirements including the proposed exports. In the event of a possible supply shortfall, Renaissance stated that priority would be given to supply long-term sales contracts, including sales to Bay State and Northern Utilities, over short-term sales contracts.

Table 9-1
Comparison of Estimates of Renaissance's Established Gas Reserves with the Applied-for Term Volume

	10^6m^3 (Bcf)	
Renaissance[1]	**NEB[2]**	**Applied-for[3] Volume**
1 034 (36.5)	1 093 (38.6)	761 (26.9)

1. As of 31 December 1993. Renaissance's estimate of remaining reserves would be approximately 130 10^6m^3 (4.6 Bcf) less than shown if adjusted for estimated production to 1 November 1995. Renaissance's estimate of reserves would then be about 900 10^6m^3 (31.8 Bcf).
2. As of 31 December 1992. The Board's estimate of remaining reserves would be approximately 205 10^6m^3 (7.2 Bcf) less than shown if adjusted for estimated production to 1 November 1995.
3. This represents the total of the applied-for volumes to be exported to Bay State and Northern Utilities.

Figure 9-1
Comparision of Renaissance's and NEB's
Estimates of Annual Capacity



9.2.3 Productive Capacity

Figure 9-1 compares the Board's and Renaissance's projections of productive capacity with the Bay State and Northern Utilities requirements. Both projections show that Renaissance has adequate gas supply from the submitted reserves for the majority of the proposed export term.

9.3 Transportation

Renaissance has applied for the requisite FS capacity on the NOVA and TransCanada systems. The incremental TransCanada facilities were approved by the Board in September 1994. Bay State and Northern Utilities have executed contracts for the necessary capacity on the National Fuel and Tennessee systems.

9.4 Market

As a result of the implementation of FERC Order 636, Bay State and Northern Utilities have divided the merchant function of Granite State Gas Transmission which previously purchased the gas supply on behalf of the two LDCs.

Bay State is the largest independent gas distributor in New England. Northern Utilities is a subsidiary of Bay State and functions as an LDC serving New Hampshire and Maine. Combined 1993 firm sales totalled about 50 Bcf; sales by Bay State account for approximately ninety percent of the total. The historical annual growth rate has been about five percent and Bay State expects the annual rate of growth to range from three to five percent over the next five years.

Renaissance expects that the proposed exports would occur at a 75 percent load factor.

9.5 Gas Sales Contracts

Renaissance executed gas sales contracts with Bay State and Northern Utilities on 6 April 1994. The term of each contract will commence on 1 November 1995 and continue for ten years unless the contracts are renewed. The contracts may be terminated by either Renaissance or the buyers unless the necessary Canadian and U.S. regulatory authorizations and transportation agreements are obtained by 31 December 1994. The two gas sales contracts are essentially identical with the exception of the purchase quantities. Renaissance stated that the gas sales contracts were negotiated at arm's length.

The gas sales contracts with Bay State and Northern Utilities provide for a Maximum Daily Quantity ("MDQ") of 180 10^3m^3 (6.4 MMcf) and 28 10^3m^3 (990 Mcf) respectively. The buyers are obligated to nominate and purchase 75 percent of the MDQ multiplied by the number of days in the year. Should Renaissance fail to deliver the quantity of gas nominated on any one day, the buyers will be indemnified for the costs of purchasing replacement gas supplies.

The monthly price to be paid to Renaissance consists of four components: a demand charge, a commodity charge, a reservation charge, and a gas transporter charge. The monthly demand charge is the sum of demand charges on the NOVA and TransCanada systems. The commodity charge is the sum of 50 percent of both the published Alberta spot price and the Midcontinent price and is applied to the delivered volumes and the volumes required for fuel gas on the NOVA and TransCanada systems. A sliding scale, from 2.5 to 10 percent of the commodity price, is used to calculate the gas reservation charge depending if the actual monthly purchases are greater than 90 percent or less than 50 percent of the MDQ multiplied by the number of days in the month. The gas transporter charge is the sum of the commodity charges under the NOVA and TransCanada service agreements.

If either of the price indices cease to be published, or if the pricing formula is no longer representative of the market price, the parties will meet to negotiate a new reference price. If agreement is not reached, the recourse will be binding arbitration.

Renaissance estimated that the price under the terms of the contracts, on 1 January 1994 at the Alberta border, would have been approximately $Cdn. 2.64/GJ ($Cdn. 2.74/MMBtu).

9.6 Status of Regulatory Authorizations

DOE/FE has authorized the import of the applied-for export volumes. As well, Renaissance has received a gas removal permit from the ERCB.

Views of the Board

The Board notes that the gas sales contracts contain a minimum take provision and that the price includes a reservation charge which increases if the buyers purchase less than 90 percent of the MDQ. Additionally, the Board recognizes that the markets for the gas have been and will likely continue to be long-term and stable. The Board is, therefore, satisfied that there is a reasonable expectation that the volumes sought to be licensed will be taken.

The Board notes the market-oriented approach used to determine the price to be paid for the gas. The gas sales contracts are also subject to binding arbitration. The Board is thus satisfied that the gas sales contracts will remain attractive to the parties over the proposed term and are, therefore, durable.

The Board has reviewed the two gas sales contracts between Renaissance and the buyers, Bay State and Northern Utilities, and is satisfied that they have been negotiated at arm's length.

Since Renaissance owns the gas supply supporting this export licence application, a finding of producer support is not necessary.

The Board notes that the contract prices include a demand charge component for the recovery of demand charges on the NOVA and TransCanada systems. Therefore, the Board is satisfied that there are provisions in the gas sales contracts to cover the payment of the associated transportation charges on Canadian pipelines over the term of the gas sales arrangements.

The Board's estimate of reserves for Renaissance's submitted gas supply exceeds Renaissance's requirements for Bay State and Northern Utilities. Additionally, the Board's projection of productive capacity for Renaissance shows adequate supply for the majority of the term of the proposed exports.

The Board notes that the terms of the gas sales contracts are identical to the applied-for terms of the proposed exports. Transportation has been arranged, or applied-for, on all required pipelines for the proposed export terms. The Board also notes that the regulatory authorizations are for a term and volume commensurate with the requested licences. The Board is, therefore, satisfied that the requested licence terms are appropriate.

Decision

The Board has decided to issue two gas export licences to Renaissance, subject to the approval of the Governor in Council. Appendix I contains the terms and conditions of the licences to be issued.

Chapter 10

Western Gas Marketing Limited

10.1 Application Summary

By application dated 7 April 1994, Western Gas sought, pursuant to Part VI of the Act, a natural gas export licence, with the following terms and conditions:

Term	- commencing on the date of issuance of the licence and ending on 31 October 2003
Point of Export	- Emerson, Manitoba
Maximum Daily Quantity	- 205.0 10^3m^3 (7.2 MMcf)
Maximum Annual Quantity	- 75.0 10^6m^3 (2.7 Bcf)
Maximum Term Quantity	- 750.0 10^6m^3 (26.5 Bcf)
Tolerances	- ten percent per day and two percent per year

Western Gas would provide the gas proposed for export from its contracted supply pool in Alberta. The gas would be transported on the NOVA system to the Alberta border at Empress. TransCanada would then deliver the gas to the export point at Emerson, Manitoba. From the international border, some of the gas would be shipped on the Great Lakes Gas Transmission Company ("GLGT") system and the balance of the gas would be transported on the Viking Gas Transmission Company ("Viking") system. ANR Pipeline Company ("ANR") would then deliver the gas to UtiliCorp United, Inc., doing business as Michigan Gas Utilities ("MGU").

TransCanada and Western Gas have for several years been suppliers to ANR which in turn supplied many LDCs including MGU. The underlying gas export licence expired in 1989 and since that time TransCanada and Western Gas have met their contractual commitments to ANR under short-term export authorizations. As a result of FERC Order 636, several of ANR's customers, including MGU, have decided to contract directly with suppliers for their gas requirements. The new export arrangement contained in this application represents the conversion of the remaining portion of the historical Western Gas/ANR agreement into direct sales by Western Gas. Most of the conversion of the Western Gas/ANR arrangement was considered in the GH-5-93 proceeding.

10.2 Gas Supply

In support of its application, Western Gas updated the gas supply analysis, including the evidence regarding the outlook for termination of its producers' supply contracts, that it provided to the Board during the GH-6-92 proceeding. The Board's assessment of Western Gas' supply reflects the Board's current estimate for all gas reserves under control of Western Gas. The reserves under control are based on the ERCB's assessment of pool ownership as of 31 December 1992.

10.2.1 Supply Contracts

Western Gas intends to supply the proposed export from its contracted supply pool. Accordingly, no specific pools have been contractually dedicated to the proposed export.

Should Western Gas' remaining reserves to production ratio fall below ten, where production in the ratio refers to long-term contracts only, Western Gas cannot enter into or renew any new sales contracts. If it still cannot meet its obligations, Western Gas is first required to curtail deliveries under its short-term sales contracts. Then if the curtailment of all short-term sales contracts is still not sufficient to remedy the situation, Western Gas is required to pro-rate the daily quantities available from its supply pool among all of its long-term sales contracts.

10.2.2 Reserves

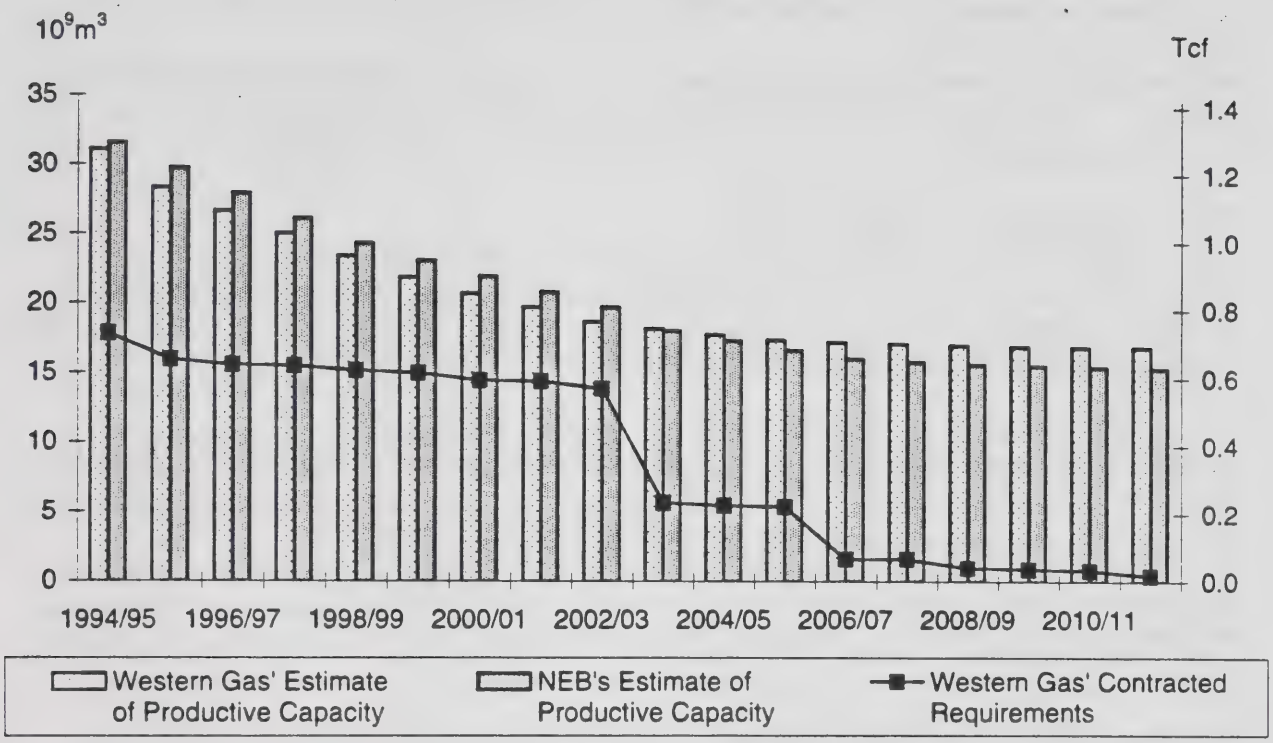
Table 10-1 shows that the Board's estimate of Western Gas' gas reserves is seven percent lower than Western Gas' estimate. However, the Board's estimate of Western Gas' reserves is about 60 percent greater than Western Gas' total contracted requirements.

Table 10-1
Comparison of Estimates of Western Gas' Established Gas Reserves with the Applied-for Term Volume

	10^9m^3 (Tcf)	
Western Gas[1]	**NEB[2]**	**Applied-for[3]**
431 (15.2)	402 (14.2)	0.675 (0.024)

1. As of 31 December 1993.
2. As of 31 December 1992.
3. These volumes represent only a portion of Western Gas' total commitments that must be provided from its supply pool. Western Gas' total contracted requirements, including the applied-for volume, are 245 10^9m^3 (8.7 Tcf). Further, this represents the applied-for volume, having been reduced by deliveries to MGU under short-term authorization up to the effective date of the applied-for licence (1 November 1994).

Figure 10-1
Comparision of Western Gas' and NEB's
Estimates of Annual Capacity



10.2.3 Productive Capacity

Figure 10-1 compares the Board's and Western Gas' projection of productive capacity with Western Gas' total contracted requirements, including fuel and shrinkage. Both Western Gas' and the Board's projections of productive capacity reflect the contract termination notices received by Western Gas to 31 October 1993. Both projections show that Western Gas has adequate gas supply from its contracted supply pool to meet its total requirements throughout the proposed export term.

10.3 Transportation

The gas proposed for export would be aggregated within Alberta and delivered to Empress, Alberta under Western Gas' existing transportation arrangements on NOVA. Western Gas would transport the volumes to Emerson, Manitoba pursuant to a firm transportation contract with TransCanada. MGU would take delivery of the gas at the international border and transport it on the systems of GLGT and Viking, and then on ANR, under existing transportation agreements.

10.4 Market

MGU is a public utility company conducting all of its business in the State of Michigan. In 1993, MGU purchased and transported 39 Bcf. Usage by customer category included residential 38 percent, commercial and industrial 27 percent, and transportation 35 percent. MGU anticipates an increase in its requirements of about eight percent over the next five years.

MGU stated that it expects operating its contract with Western Gas at a load factor of at least 90 percent.

10.5 Gas Sales Contracts

Western Gas executed a gas sales contract with MGU dated 26 October 1993. The term of the agreement commences on the date of the issuance of the licence and continues until 1 November 2003. The contract provides for an extension of the term.

The contract provides for a DCQ of 205 10^3m^3 (7.2 MMcf). While there is no minimum take provision in the agreement, Western Gas stated that a number of factors would result in the contract being operated at a high load factor. First, MGU pays a monthly Gas Inventory Charge ("GIC") equal to four percent of the commodity charge. Second, MGU will also pay a deficiency charge of $U.S. 0.05 per Mcf on quantities not taken under 20 percent of the DCQ. Third, Western Gas stated that there was a higher proportion of fixed costs relative to total costs for Canadian gas, as compared with alternative U.S. supplies. It was likely, therefore, that Canadian supplies would be used before U.S. gas.

The contract price consists of four components: a demand charge, a GIC, a minimum deficiency charge and a commodity charge. The demand charge comprises the monthly demand tolls on NOVA and TransCanada. The GIC and minimum take deficiency charge were described above. The monthly commodity charge at Emerson will be the average of Louisiana and Oklahoma spot prices, as published in McGraw Hill's "Inside F.E.R.C.'s Gas Market Report" less a differential of $U.S. 0.28 per MMBtu.

The commodity charge may be renegotiated for the contract year commencing 1 November 1995 and for every second year thereafter. As well, once each year, either party may require redetermination to adopt an Alberta price index as part of the pricing mechanism. The contracts provide for binding arbitration if necessary.

Western Gas estimated that the prices under the terms of the contract, on 1 January 1994 at the Alberta border, would have been approximately $Cdn. 2.37/GJ ($Cdn. 2.50/MMBtu).

10.6 Status of Regulatory Authorizations

A finding of producer support was obtained from the Alberta Petroleum Marketing Commission ("APMC"). As well, DOE/FE has authorized the import of the applied-for export volumes. Western Gas would remove the gas from Alberta under authority of ERCB removal permit GR 91-9A.

Views of the Board

The Board notes that Canadian gas has been flowing to MGU for several years. The Board also notes that there is a provision in the contract for the payment of a monthly GIC and minimum take deficiency charge. The Board is, therefore, satisfied that there is a reasonable expectation that the volumes sought to be licensed will be taken.

The Board notes the market-oriented approach, including binding arbitration, used to determine the commodity charge. The Board is thus satisfied that the gas sales contract will remain attractive to the parties over the proposed term and is, therefore, durable.

The Board has reviewed the gas sales contract between Western Gas and MGU and is satisfied that it has been negotiated at arm's length.

The Board notes that Western Gas received a finding of producer support from the APMC.

The gas sales contract requires MGU to reimburse Western Gas for demand charges on NOVA and TransCanada. The Board is, therefore, satisfied that this provision will ensure the payment of the associated transportation charges on Canadian pipelines over the term of the gas sales contract.

The Board's estimate of Western Gas' reserves exceeds the applicant's total contracted requirements, including the applied-for volumes. Additionally, the Board's projections of productive capacity show that Western Gas should be able to meet its contracted requirements throughout the proposed export term.

The Board notes that the term of the gas sales contract is identical to the applied-for term of the proposed export. Transportation has been arranged on all required pipelines for the proposed export term. The Board also notes that the applied-for regulatory authorizations are for a term and volume commensurate with the requested licence. The Board is, therefore, satisfied that the term for the licence is appropriate.

Finally, Western Gas assumed a commencement date of 1 November 1993 for the purpose of determining the term volume to be included in the licence. Since the Board does not backdate its licences, the applied-for term volume must be adjusted to account for a shorter export term. Assuming a commencement date of 1 November 1994, the Board has reduced the term volume by 75 $10^6 m^3$ (2.7 Bcf). During the hearing, Western Gas agreed with the Board's method of calculating this reduction in the term volume.

Decision

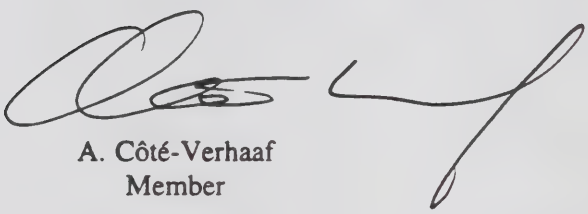
The Board has decided to issue a gas export licence to Western Gas, subject to the approval of the Governor in Council. Appendix I contains the terms and conditions of the licence to be issued.

Chapter 11

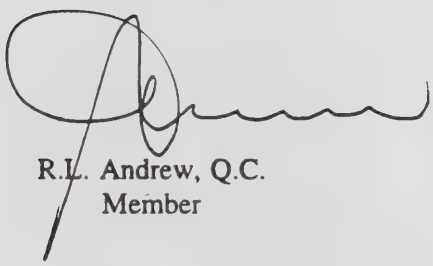
Disposition

The foregoing chapters constitute our Decisions and Reasons for Decision in respect of those applications heard by the Board in the GH-3-94 proceeding.

K.W. Vollman
Presiding Member



A. Côté-Verhaaf
Member



R.L. Andrew, Q.C.
Member

Calgary, Alberta
November 1994

Appendix I

Terms and Conditions of the Licences to be Issued

Terms and Conditions of the Two Licences to be Issued to CanStates Gas Marketing

Licence A. "Pool Licence"

1. (a) Subject to condition 1(b), the term of this Licence shall commence on the date of first deliveries and shall end 15 years following the commencement of the term of this Licence.

   (b) The term of this Licence shall end on 1 November 1998 unless exports commence hereunder on or before that date.

2. Subject to condition 3, the quantity of gas that CanStates may export under the authority of this Licence shall not exceed:

   (a) 841 450 cubic metres in any one day;

   (b) 307 129 000 cubic metres in any consecutive twelve-month period ending on 31 October; or

   (c) 4 606 939 000 cubic metres during the term of this Licence.

3. (a) As a tolerance, the amount that may be exported in any 24-hour period under the authority of this Licence may exceed the daily limitation imposed in condition 2 by ten percent.

   (b) As a tolerance, the amount that may be exported in any consecutive twelve-month period under the authority of this Licence may exceed the annual limitation imposed in condition 2 by two percent.

4. Gas exported under the authority of this Licence shall be delivered to the point of export near Kingsgate, B.C.

Licence B. "Home Licence"

1. (a) Subject to condition 1(b), the term of this Licence shall commence on the date of first deliveries and shall end 15 years following the commencement of the term of this Licence.

   (b) The term of this Licence shall end on 1 November 1998 unless exports commence hereunder on or before that date.

2. Subject to condition 3, the quantity of gas that CanStates may export under the authority of this Licence shall not exceed:

   (a) 420 700 cubic metres in any one day;

   (b) 153 545 000 cubic metres in any consecutive twelve-month period ending on 31 October; or

   (c) 2 303 168 000 cubic metres during the term of this Licence.

3. (a) As a tolerance, the amount that may be exported in any 24-hour period under the authority of this Licence may exceed the daily limitation imposed in condition 2 by ten percent.

   (b) As a tolerance, the amount that may be exported in any consecutive twelve-month period under the authority of this Licence may exceed the annual limitation imposed in condition 2 by two percent.

4. Gas exported under the authority of this Licence shall be delivered to the point of export near Kingsgate, B.C.

Terms and Conditions of the Licence to be Issued to Chevron Canada Resources Limited

1. (a) Subject to condition 1(b), the term of this Licence shall commence on the later of 1 July 1996 or the date of first deliveries and shall end 15 years following the commencement of the term of this Licence.

   (b) The term of this Licence shall end on 1 November 1998 unless exports commence hereunder on or before that date.

2. Subject to condition 3, the quantity of gas that Chevron may export under the authority of this Licence shall not exceed:

   (a) 585 800 cubic metres in any one day;

   (b) 214 400 000 cubic metres in any consecutive twelve-month period ending on 31 October; or

   (c) 3 210 000 000 cubic metres during the term of this Licence.

3. (a) As a tolerance, the amount that may be exported in any 24-hour period under the authority of this Licence may exceed the daily limitation imposed in condition 2 by ten percent.

   (b) As a tolerance, the amount that may be exported in any consecutive twelve-month period under the authority of this Licence may exceed the annual limitation imposed in condition 2 by two percent.

4. Gas exported under the authority of this Licence shall be delivered to the point of export near Kingsgate, B.C.

Terms and Conditions of the Licence to be Issued to Renaissance Energy Ltd. for Sale to AmGas.

1. (a) Subject to condition 1(b), the term of this Licence shall commence on the date of Governor in Council approval hereof and shall end on 31 October 2003.

   (b) The term of this Licence shall end on 1 November 1996 unless exports commence hereunder on or before that date.

2. Subject to condition 3, the quantity of gas that Renaissance may export under the authority of this Licence shall not exceed:

   (a) 140 000 cubic metres in any one day;

   (b) 51 100 000 cubic metres in any consecutive twelve-month period ending on 31 October; or

   (c) 460 000 000 cubic metres during the term of this Licence.

3. (a) As a tolerance, the amount that may be exported in any 24-hour period under the authority of this Licence may exceed the daily limitation imposed in condition 2 by ten percent.

   (b) As a tolerance, the amount that may be exported in any consecutive twelve-month period under the authority of this Licence may exceed the annual limitation imposed in condition 2 by two percent.

4. Gas exported under the authority of this Licence shall be delivered to the point of export near Monchy, Saskatchewan.

Terms and Conditions of the Two Licences to be Issued to Renaissance Energy Ltd. for Sale to Bay State and Northern Utilities.

Licence A. "Bay State"

1. (a) Subject to condition 1(b), the term of this Licence shall commence on 1 November 1995 and shall end on 31 October 2005.

   (b) The term of this Licence shall end on 1 November 1997 unless exports commence hereunder on or before that date.

2. Subject to condition 3, the quantity of gas that Renaissance may export under the authority of this Licence shall not exceed:

   (a) 180 000 cubic metres in any one day;

(b) 66 000 000 cubic metres in any consecutive twelve-month period ending on 31 October; or

(c) 660 000 000 cubic metres during the term of this Licence.

3. (a) As a tolerance, the amount that may be exported in any 24-hour period under the authority of this Licence may exceed the daily limitation imposed in condition 2 by ten percent.

(b) As a tolerance, the amount that may be exported in any consecutive twelve-month period under the authority of this Licence may exceed the annual limitation imposed in condition 2 by two percent.

4. Gas exported under the authority of this Licence shall be delivered to the point of export near Niagara Falls, Ontario.

Licence B. "Northern Utilities"

1. (a) Subject to condition 1(b), the term of this Licence shall commence on 1 November 1995 and shall end on 31 October 2005.

(b) The term of this Licence shall end on 1 November 1997 unless exports commence hereunder on or before that date.

2. Subject to condition 3, the quantity of gas that Renaissance may export under the authority of this Licence shall not exceed:

(a) 28 000 cubic metres in any one day;

(b) 10 100 000 cubic metres in any consecutive twelve-month period ending on 31 October; or

(c) 101 000 000 cubic metres during the term of this Licence.

3. (a) As a tolerance, the amount that may be exported in any 24-hour period under the authority of this Licence may exceed the daily limitation imposed in condition 2 by ten percent.

(b) As a tolerance, the amount that may be exported in any consecutive twelve-month period under the authority of this Licence may exceed the annual limitation imposed in condition 2 by two percent.

4. Gas exported under the authority of this Licence shall be delivered to the point of export near Niagara Falls, Ontario.

Terms and Conditions of the Licence to be Issued to Western Gas Marketing Limited

1. (a) Subject to condition 1(b) the term of this Licence shall commence on the date of Governor in Council approval hereof and shall end on 31 October 2003.

   (b) The term of this Licence shall end on 1 November 1996 unless exports commence hereunder on or before that date.

2. Subject to condition 3, the quantity of gas that Western Gas may export under the authority of this Licence shall not exceed:

   (a) 205 000 cubic metres in any one day;

   (b) 75 000 000 cubic metres in any consecutive twelve-month period ending on 31 October; or

   (c) 675 000 000 cubic metres during the term of this Licence.

3. (a) As a tolerance, the amount that may be exported in any 24-hour period under the authority of this Licence may exceed the daily limitation imposed in condition 2 by ten percent.

   (b) As a tolerance, the amount that may be exported in any consecutive twelve-month period under the authority of this Licence may exceed the annual limitation imposed in condition 2 by two percent.

4. Gas exported under the authority of this Licence shall be delivered to the point of export near Emerson, Manitoba.